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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2014

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ENACTED THROUGH THE 2014 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS
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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2014

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CHAPTER 1

Descent and Distribution

§ 91-1-15. Descent among illegitimates; definitions.

JUDICIAL DECISIONS

3. Inheritance by illegitimates.

Miss. Code Ann. § 91-1-15(3)(c)'s 90-day limitations period for an illegitimate child to seek a determination of paternity was tolled while the child did not have notice of the estate proceeding, but it

began to run when he filed a motion to remove the administrator and expired 90 days later, over a month before he sought a paternity determination. In re Estate of Elmore, — So. 3d —, 2013 Miss. App. LEXIS 795 (Miss. Ct. App. Nov. 26, 2013).

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§ 91-5-1. Who may execute; signature; attestation.

JUDICIAL DECISIONS

8. Testamentary capacity.

11. —Undue influence.

12. Execution, in general.

8. Testamentary capacity.

11. —Undue influence.

In a will contest amongst siblings, the proponent and beneficiary was unable to overcome the presumption of undue influence because, inter alia, the beneficiary

was substantially involved in the procurement of the will and paid the costs of the will's execution, and the testator, who was the siblings' mother, was not aware of her total assets and their worth, was totally dependent on the beneficiary to handle her finances, and did not seek advice from a person disconnected to the beneficiary. Thomas v. Thomas, 122 So. 3d 111 (Miss. Ct. App. 2013).

12. Execution, in general.

Although a testator did not affix her initials in the margins of the first two pages of her four-page will, the will was validly executed because there was evi-

dence the testator actually signed the will in the presence of two attesting witnesses. *Thomas v. Thomas*, 122 So. 3d 111 (Miss. Ct. App. 2013).

CHAPTER 7

Executors and Administrators

§ 91-7-25. Necessary parties to contest.

JUDICIAL DECISIONS

2. Standing.

Appellant was properly ordered to pay an estate's attorneys' fees under Miss. R. Civ. P. 11, as appellant's arguments on the issue of his standing to contest the will were frivolous, his filings contained misrepresented facts, and the estate was forced to incur unnecessary attorney's fees in responding to those filings. *Covington v. McDaniel* (In re Estate of Necaise), 126 So. 3d 49 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 598 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 601 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

As appellant failed to obtain a judgment, or status as a creditor of the estate,

because the statute of limitations had expired and the action was not properly served upon the estate or the decedent during his lifetime, appellant did not have a direct pecuniary interest against the estate and thus was not an interested party under Miss. Code Ann. § 91-7-25; therefore, he was not a proper party to the will contest. *Covington v. McDaniel* (In re Estate of Necaise), 126 So. 3d 49 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 598 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 601 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

§ 91-7-151. Claims to be registered in ninety days or barred; amendment of affidavits.

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1. In general; applicability.
2. —Applicability to particular circumstances.

1. In general; applicability.

2. —Applicability to particular circumstances.

Claim for reimbursement of funeral expenses was not untimely under this sec-

tion because the expenses were not required to be probated; such claims were considered to be a part of the cost of the administration of the estate, and the requirement to probate a claim applied to obligations incurred by a decedent during his lifetime. *In re Estate of Whitley v. Love*, 129 So. 3d 260 (Miss. Ct. App. 2013).

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Mississippi Uniform Trust Code

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ARTICLE 1.

GENERAL PROVISIONS AND DEFINITIONS.

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91-8-112.	Rules of construction.

§ 91-8-101. Short title.

This chapter may be cited as the Mississippi Uniform Trust Code.

SOURCES: Laws, 2014, ch. 421, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 421, § 104 provides:

“SECTION 104. The codifier is directed to codify Sections 1 through 104 of this act as Title 91, Chapter 8, Mississippi Code of 1972.” At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, Section 104 has not been codified as it is only directory language.

Comparable Laws from other States — Alabama: Code of Ala. § 19-3B-101 et seq.

District of Columbia: D.C. Code § 19-1301.01 et seq.

Kansas: K.S.A. § 58a-101 et seq.

Maine: 18-B M.R.S. § 101 et seq.

Missouri: §§ 456.1-101 through 456.11-1106 R.S. Mo.

Nebraska: R.R.S. Neb. § 30-3801 et seq.

New Hampshire: RSA 564-B:1-101 et seq.
New Mexico: N.M. Stat. Ann. § 46A-1-101 et seq.
North Carolina: N.C. Gen. Stat. § 36C-1-101 et seq.
North Dakota: N.D. Cent. Code §§ 59-09-01 through 59-19-02.
Ohio: O.R.C. §§ 5801.01 through 5811.03.
Oregon: ORS § 130.001 et seq.
Pennsylvania: 20 Pa.C.S. §§ 7701 through 7790.3.
South Carolina: S.C. Code Ann. § 62-7-101 et seq.
Tennessee: Tenn. Code Ann. § 35-15-101 et seq.
Utah: Utah Code Ann. §§ 75-7-101 through 75-7-1201.
Vermont: 14A V.S.A. § 101 et seq.
Virginia: Va. Code Ann. § 64.2-700 et seq.
West Virginia: W. Va. Code § 44D-1-101 et seq.
Wyoming: Wyo. Stat. § 4-10-101 et seq.

§ 91-8-102. Scope.

This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

SOURCES: Laws, 2014, ch. 421, § 2, eff from and after July 1, 2014.

§ 91-8-103. Definitions.

In this chapter:

- (1) “Action,” with respect to an act of a trustee, includes a failure to act.
- (2) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.
- (3) “Beneficial interest” means a distribution interest or a remainder interest; provided, however, a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor.
- (4) “Beneficiary” means a person that:
 - (A) Has a present or future beneficial interest in a trust, vested or contingent; or
 - (B) In a capacity other than that of trustee, holds a power of appointment over trust property.
- (5) “Beneficiary surrogate” means a person, other than a trustee, designated by the settlor in the trust instrument or in a writing delivered to the trustee, or designated by a trust protector or trust advisor pursuant to the terms of the trust instrument to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b).
- (6) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in Section 91-8-405(a).
- (7) “Conservator” means a person appointed by the court to administer the estate of a minor or adult individual pursuant to Section 93-13-251.

(8) “Directed trust” means a trust where through the terms of the trust, one or more persons are given the authority to direct or consent to a fiduciary’s actual or proposed investment decision, distribution decision, or any other decision of the fiduciary.

(9) “Distribution interest” means:

(A) An interest, other than a remainder interest, held by an eligible distributee or permissible distributee under a trust and may be a current distribution interest or a future distribution interest;

(B) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

- a. All income shall be distributed to a named beneficiary; or
- b. One Hundred Thousand Dollars (\$100,000.00) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as “shall make distributions” and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

- a. The trustee shall make distributions for health, education, maintenance, and support;

b. Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subparagraph defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

- a. The trustee may, in the trustee’s sole and absolute discretion, make distributions for health, education, maintenance, and support;
- b. The trustee, in the trustee’s sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

c. The trustee may make distributions for health, education, maintenance, and support;

d. The trustee shall make distributions for health, education, maintenance, and support; however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

e. The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

f. A discretionary interest may also be evidenced by:

1. Permissive distribution language such as “may make distributions”;

2. Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as “the trustee shall make distributions in the trustee’s sole and absolute discretion”;

g. An interest that includes mandatory distribution language such as “shall” but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(C)(i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

a. The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

b. The trust shall be a support interest only to the extent of such support distribution language; and

c. The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subparagraph (C), a support interest that includes mandatory distribution language such as “shall” but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest.

(10) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(11) “Excluded fiduciary” means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty; and

(B) The power or duty is granted or reserved to another person.

(12) “Fiduciary” means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent’s estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) For purposes of subparagraph (A), an agency agreement includes, but is not limited to, any agreement under which any delegation is made,

either pursuant to Section 91-8-807 or by anyone holding a power or duty pursuant to Article 12;

(C) For purposes of the definition of fiduciary in Section 91-8-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in Section 91-8-103.

(13) “Guardian” means a person appointed by the court pursuant to Section 93-13-13 or a parent to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(14) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(15) “Internal Revenue Code” means the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

(16) “Jurisdiction,” with respect to a geographic area, includes a state or country.

(17) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(18) “Power of appointment” means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person’s capacity as settlor.

(19) “Power of withdrawal” means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(20) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(21) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(22) “Remainder interest” means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future.

(23) “Reserved power” means a power held by a settlor.

(24) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(25) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(26) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(28) “Successors in interest” means the beneficiaries under the settlor’s will, if the settlor has a will, or in the absence of an effective will provision, the settlor’s heirs at law.

(29) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(30) “Trust advisor” means any person described in Section 91-8-1201(a).

(31) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(32) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

(33) “Trust protector” means any person described in Section 91-8-1201(a).

SOURCES: Laws, 2014, ch. 421, § 3, eff from and after July 1, 2014.

Cross References — Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

Federal Aspects — Sections 2041 and 2514 of the Internal Revenue Code of 1986, see 26 U.S.C. §§ 2041 and 2514, respectively.

§ 91-8-104. Knowledge.

(a) Subject to subsection (b), a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to

the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

SOURCES: Laws, 2014, ch. 421, § 4, eff from and after July 1, 2014.

§ 91-8-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; however, nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principal of freedom of disposition and to the enforceability of trust instruments.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful and possible to achieve;

(4) The power of the court to modify or terminate a trust under Sections 91-8-410 through 91-8-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in the Family Trust Preservation Act, Section 91-9-501 et seq.;

(6) The power of the court under Section 91-8-702 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under Section 91-8-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to subsection (d), the duty under Section 91-8-813(b) to notify beneficiaries of an irrevocable trust (including anyone who holds of a power of appointment) who have attained twenty-five (25) years of age that the trust has been established as set forth in that Section 91-8-813(b);

(9) Subject to subsection (d), the duty under Section 91-8-813(a)(1) and (2) to keep the beneficiaries (including anyone who holds a power of

appointment) informed and to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust;

(10) The effect of an exculpatory term under Section 91-8-1008;

(11) The rights under Sections 91-8-1010 through 91-8-1013 of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 91-8-203 and 91-8-204.

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter.

(d) Notwithstanding subsection (b)(8) and (9) of this section, the duties of a trustee to give notice, information and reports under Section 91-8-813(a) and (b) may be waived or modified in the trust instrument or by the settlor of the trust, or a trust protector or trust advisor that holds the power to so direct, directs otherwise in a writing delivered to the trustee in any of the following ways:

(1) By waiving or modifying such duties as to all qualified beneficiaries during the lifetime of the settlor or the settlor's spouse;

(2) By specifying a different age at which a beneficiary or class of beneficiaries must be notified under Section 91-8-813(b); and

(3) With respect to one or more of the beneficiaries, by designating a beneficiary surrogate to receive such notice, information and reports who will act in good faith to protect the interests of the beneficiary or beneficiaries.

SOURCES: Laws, 2014, ch. 421, § 5, eff from and after July 1, 2014.

§ 91-8-106. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

SOURCES: Laws, 2014, ch. 421, § 6, eff from and after July 1, 2014.

§ 91-8-107. Governing law.

(a) The validity, construction and administration of a trust are determined by the law of the jurisdiction designated in the terms of the trust instrument.

(b) In the absence of a controlling designation in the terms of the trust, the laws of the jurisdiction where the trust was executed determine the validity of the trust, construction of the trust instrument and the laws of

descent, while the laws of the principal place of administration determine the administration of the trust.

SOURCES: Laws, 2014, ch. 421, § 7, eff from and after July 1, 2014.

§ 91-8-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, the terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) All or part of the administration occurs in the designated jurisdiction; administration includes, but is not limited to:

(A) Maintenance of some trust records physically in the designated jurisdiction;

(B) Wholly or partly preparing or arranging for the preparation, either on an exclusive or a nonexclusive basis, in the designated jurisdiction of an income tax return that must be filed for the trust; or

(3) Some or all of the trust assets are deposited in the designated jurisdiction or physical evidence of the assets is held in the designated jurisdiction and the trust is being administered by a person defined in subsection (a)(1). For purposes of this subsection (a)(3), "deposited in the designated jurisdiction," includes assets being held in any checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in the designated jurisdiction.

(b) Except as otherwise expressly provided by the terms of a governing instrument specifically addressing the governing law for trust administration or by court order, the laws of this state shall govern the administration of a trust while the trust is administered in this state. Without precluding other means for establishing that a trust is administered in this state, if any of the activities described in subsection (a) occur in this state, the trust is administered in this state.

(c) A trustee shall administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries; however, a trustee shall not be required, in the absence of a court order, to transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States even though such other state or jurisdiction outside the United States could also be appropriate to its purposes, its administration, and the interests of the beneficiaries.

(d) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States, if the transfer is to a place appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration to another state or to a

jurisdiction outside the United States not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include:

- (1) The name of the jurisdiction to which the principal place of administration is to be transferred;
- (2) The address and telephone number at the new location at which the trustee can be contacted;
- (3) An explanation of the reasons for the proposed transfer;
- (4) The date on which the proposed transfer is anticipated to occur; and
- (5) The date, not less than sixty (60) days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a majority of the qualified beneficiaries described in Section 91-8-103 notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 91-8-704.

SOURCES: Laws, 2014, ch. 421, § 8, eff from and after July 1, 2014.

§ 91-8-109. Methods and waiver of notice.

(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

SOURCES: Laws, 2014, ch. 421, § 9, eff from and after July 1, 2014.

§ 91-8-110. Others treated as qualified beneficiaries.

A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of other distributees or permissible distributees then receiving or eligible to receive distributions terminated on that date without causing the trust to terminate; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

SOURCES: Laws, 2014, ch. 421, § 10, eff from and after July 1, 2014.

§ 91-8-111. Nonjudicial settlement agreements.

(a) Except as otherwise provided in subsection (b), the trustee and qualified beneficiaries may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(b) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(c) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) The interpretation or construction of the terms of the trust;
- (2) The approval of a trustee's report or accounting;
- (3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) The resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) Transfer of a trust's principal place of administration;
- (6) Liability of a trustee for an action relating to the trust;
- (7) The extent or waiver of bond of a trustee;
- (8) The governing law of the trust; and
- (9) The criteria for distribution to a beneficiary where the trustee is given discretion.

(d) Any qualified beneficiary or trustee may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

SOURCES: Laws, 2014, ch. 421, § 11, eff from and after July 1, 2014.

§ 91-8-112. Rules of construction.

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

SOURCES: Laws, 2014, ch. 421, § 12, eff from and after July 1, 2014.

ARTICLE 2.

JUDICIAL PROCEEDINGS.

SEC.

91-8-201.	Role of court in administration of trust.
91-8-202.	Jurisdiction over trustee and beneficiary.
91-8-203.	Subject-matter jurisdiction.
91-8-204.	Venue.
91-8-205.	Judicial accountings and settlements.

§ 91-8-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, but not limited to, a proceeding to:

- (1) Request instructions;
- (2) Determine the existence or nonexistence of any immunity, power, privilege, duty or right;
- (3) Approve a nonjudicial settlement;
- (4) Interpret or construe the terms of the trust;
- (5) Determine the validity of a trust or of any of its terms;
- (6) Approve a trustee's report or accounting or compel a trustee to report or account;
- (7) Direct a trustee to refrain from performing a particular act or grant to a trustee any necessary or desirable power;
- (8) Review the actions or approve the proposed actions of a trustee, including the exercise of a discretionary power;
- (9) Accept the resignation of a trustee;
- (10) Appoint or remove a trustee;
- (11) Determine a trustee's compensation;
- (12) Transfer a trust's principal place of administration or a trust's property to another jurisdiction;
- (13) Determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;
- (14) Modify or terminate a trust;
- (15) Combine trusts or divide a trust;
- (16) Determine liability of a trust for debts of a beneficiary and living settlor;
- (17) Determine liability of a trust for debts, expenses of administration, and statutory allowances chargeable against the estate of a deceased settlor;
- (18) Determine the liability of a trust for claims, expenses and taxes in connection with the settlement of a trust that was revocable at the settlor's death; and

(19) Ascertain beneficiaries and determine to whom property will pass upon final or partial termination of a trust.

SOURCES: Laws, 2014, ch. 421, § 13, eff from and after July 1, 2014.

§ 91-8-202. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

SOURCES: Laws, 2014, ch. 421, § 14, eff from and after July 1, 2014.

§ 91-8-203. Subject-matter jurisdiction.

(a) Except as provided in subsections (b) and (c), the chancery court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) Any other court granted statutory equitable jurisdiction has concurrent jurisdiction with the chancery court in any proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(c) The chancery court has concurrent jurisdiction with other courts of this state in other proceedings involving a trust.

SOURCES: Laws, 2014, ch. 421, § 15, eff from and after July 1, 2014.

§ 91-8-204. Venue.

(a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

SOURCES: Laws, 2014, ch. 421, § 16, eff from and after July 1, 2014.

§ 91-8-205. Judicial accountings and settlements.

(a) A trustee may file an accounting of the trustee's administration of a trust in court at any time and seek a partial or final settlement thereof or, upon petition of an interested party, a court may order a trustee to render an accounting of the trustee's administration of a trust and require a partial or final settlement thereof. Notice of such judicial proceeding shall be provided to the trustee and each beneficiary, or representative thereof pursuant to Article 3, as provided by the applicable rules of civil procedure.

(b) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date upon which the trustee became accountable, or other such date the court may set, which provides reasonable detail of the transactions affecting the administration of the trust, and which adequately discloses the following information:

(1) The accounting must identify the trust, the trustee furnishing the accounting, and the time period covered by the accounting.

(2) The accounting must show all receipts and disbursements occurring during the accounting period. Gains and losses realized during the accounting period must also be shown.

(3) The accounting, to the extent feasible, must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two (2) values, (A) the asset acquisition value or carrying value, and (B) the estimated current value, if feasible. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.

(4) To the extent feasible, the accounting must show the significant noncash transactions affecting the assets of the trust, including name changes in investment holdings, adjustments to carrying value, or stock splits.

(5) The accounting must reflect the allocation of receipts and disbursements between income and principal when the allocation affects the interest of any beneficiary of the trust.

(c) Any order or judgment of the court on such accounting and partial or final settlement shall be final and conclusive as to all matters occurring during the accounting period, and appeals therefrom shall and must be taken in the manner provided for from any other final judgment of the court.

SOURCES: Laws, 2014, ch. 421, § 17, eff from and after July 1, 2014.

Cross References — Article 3 of this chapter, see §§ 91-8-301 through 91-8-305.

ARTICLE 3.

REPRESENTATION.

SEC.

91-8-301.	Representation: basic effect.
91-8-302.	Representation by holder of power of appointment.
91-8-303.	Representation by fiduciaries and parents.
91-8-304.	Representation by person having substantially identical interest.
91-8-305.	Appointment of representative.

§ 91-8-301. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in Sections 91-8-411 and 91-8-602, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under Section 91-8-411(a).

SOURCES: Laws, 2014, ch. 421, § 18, eff from and after July 1, 2014.

§ 91-8-302. Representation by holder of power of appointment.

To the extent there is no material conflict of interest between the holder of a power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

SOURCES: Laws, 2014, ch. 421, § 19, eff from and after July 1, 2014.

§ 91-8-303. Representation by fiduciaries and parents.

To the extent there is no material conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator or guardian may represent and bind the estate that the conservator or guardian controls;

(2) A conservator or guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

- (3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) A trustee may represent and bind the beneficiaries of the trust;
- (5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;
- (6) A parent may represent and bind the person's minor or unborn child if a conservator or guardian for the descendant has not been appointed;
- (7) A grandparent may represent the grandparent's grandchild if that grandchild is not already represented by a parent under paragraph (6); and
- (8) A person designated by the settlor in the trust instrument or in a writing delivered to the trustee to represent the beneficiaries of the trust may represent and bind such beneficiaries.

SOURCES: Laws, 2014, ch. 421, § 20, eff from and after July 1, 2014.

§ 91-8-304. Representation by person having substantially identical interest.

(a) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no material conflict of interest between the representative and the person represented.

(b) Unless otherwise represented, whenever survivorship of another person is an express or implied condition of receiving property from a trust, the successor contingent remainder beneficiary may be represented and bound by the presumptive remainder beneficiary upon whose death the rights of the successor contingent remainder beneficiary depend, but only to the extent there is no material conflict of interest between the presumptive remainder beneficiary and the successor contingent remainder beneficiary.

SOURCES: Laws, 2014, ch. 421, § 21, eff from and after July 1, 2014.

§ 91-8-305. Appointment of representative.

(a) If the court determines that an interest is not represented under this article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem or other representative may be appointed to represent several persons or interests.

(b) A guardian ad litem or other representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a guardian ad litem or other representative may consider general benefit accruing to the living members of the individual's family.

SOURCES: Laws, 2014, ch. 421, § 22, eff from and after July 1, 2014.

ARTICLE 4.

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST.

SEC.	
91-8-401.	Methods of creating trust.
91-8-402.	Requirements for creation.
91-8-403.	Trusts created in other jurisdictions.
91-8-404.	Trust purposes.
91-8-405.	Charitable purposes; enforcement.
91-8-406.	Creation of trust induced by fraud, duress, or undue influence.
91-8-407.	Evidence of oral trust; trust in land.
91-8-408.	Trust for care of animal.
91-8-409.	Noncharitable trust without ascertainable beneficiary.
91-8-410.	Modification or termination of trust; proceedings for approval or disapproval.
91-8-411.	Modification or termination of noncharitable irrevocable trust by consent.
91-8-412.	Modification or termination because of unanticipated circumstances or inability to administer trust effectively.
91-8-413.	Cy pres.
91-8-414.	Modification or termination of uneconomic trust.
91-8-415.	Reformation to correct mistakes.
91-8-416.	Modification to achieve settlor's tax objectives.
91-8-417.	Combination and division of trusts.

§ 91-8-401. Methods of creating trust.

A trust may be created by:

- (1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee;
- (3) Exercise of a power of appointment in favor of a trustee; or
- (4) A court pursuant to its statutory or equitable powers; or
- (5)(A) By an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or
- (B) By an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust. An agent or attorney-in-fact may file a petition for the court to determine whether a power of attorney described in this section grants the agent or attorney-

in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

SOURCES: Laws, 2014, ch. 421, § 23, eff from and after July 1, 2014.

§ 91-8-402. Requirements for creation.

(a) A trust is created only if:

- (1) The settlor has capacity to create a trust;
- (2) The settlor indicates an intention to create the trust;
- (3) The trust has a definite beneficiary or is:
 - (A) A charitable trust;
 - (B) A trust for the care of an animal, as provided in Section 91-8-408;

or

(C) A trust for a noncharitable purpose, as provided in Section 91-8-409;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) A settlor is deemed to have the capacity to create a trust if:

- (1) The trust is created by an agent of the settlor under a power of attorney as described in Section 91-8-401(5); and
- (2) The settlor had capacity to create a trust at the time the power of attorney was executed.

SOURCES: Laws, 2014, ch. 421, § 24, eff from and after July 1, 2014.

§ 91-8-403. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

- (1) The settlor was domiciled, had a place of abode, or was a national;
- (2) A trustee was domiciled or had a place of business; or
- (3) Any trust property was located.

SOURCES: Laws, 2014, ch. 421, § 25, eff from and after July 1, 2014.

§ 91-8-404. Trust purposes.

A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its

beneficiaries as the interests of such beneficiaries are defined under the terms of the trust.

SOURCES: Laws, 2014, ch. 421, § 26, eff from and after July 1, 2014.

§ 91-8-405. Charitable purposes; enforcement.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

SOURCES: Laws, 2014, ch. 421, § 27, eff from and after July 1, 2014.

§ 91-8-406. Creation of trust induced by fraud, duress, or undue influence.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

SOURCES: Laws, 2014, ch. 421, § 28, eff from and after July 1, 2014.

§ 91-8-407. Evidence of oral trust; trust in land.

(a) Except as provided in subsection (b) and except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

(b)(1) No trust of or in any real property can be created except by a written instrument signed by the party who declares or creates such trust (the "settlor"), or by his last will, in writing. Every writing declaring or creating a trust in real property, other than a last will, may be acknowledged and proved as other writing and filed for record with the clerk of the chancery court in which the real property, or part of it, is located, and the filing shall serve as constructive notice of the existence and terms of the trust from and after filing.

(2) In lieu of filing the trust instrument, there may be filed a memorandum of trust signed by the settlor, trustee, or successor trustee and acknowledged or proved as other writings, which memorandum shall contain the following information:

(A) The name of the trust;

(B) The street and mailing address of the office, and the name and street and mailing address and telephone number of the trustee;

(C) The name and street and mailing address and telephone number of the settlor of the trust;

(D) A legally sufficient description of all interests in real property owned by or conveyed to the trust;

(E) The anticipated date of termination of the trust or the event upon which the trust will be terminated; and

(F) The general powers granted to the trustee.

The memorandum may also contain the name and street and mailing address and telephone number of any successor trustee, and if so, no amendment to the memorandum will be required to be filed if and when the successor trustee so named assumes office. The memorandum of trust may be filed with the clerk of the appropriate chancery court either before or after a deed of conveyance of real property to the trust or trustee, in his capacity as such. The memorandum need not comply with subparagraph (D) if filed before or contemporaneously with a conveyance of any real property to the trust or trustee in his capacity as such, and need not be amended upon a subsequent conveyance of real property to the trust or trustee in his capacity as such, so long as the deed of conveyance is recorded in the appropriate county, and the recording of the deed of conveyance to the trust or trustee, as the case may be, shall constitute compliance with subparagraph (D). In addition, the deed of conveyance may also serve as a memorandum of trust, or an amendment to the memorandum of trust, as the case may be, so long as the deed of conveyance contains the information required for a memorandum of trust as set forth in this subsection (b).

(3) The settlor may amend the memorandum if the trust to which it relates is subject to a power of amendment or revocation by the settlor; otherwise, only the then-serving trustee may amend the memorandum. The memorandum of amendment shall set forth the amendment to the original memorandum with particularity. The amended memorandum of trust may be made effective on a future date, which must be a date certain. The memorandum of amendment may be signed by the creator, trustee or successor trustee, as the case may be, and acknowledged or proved as other writings and filed for record with the clerk of the chancery court where the original memorandum is of record.

(4) The provision of Sections 89-5-24 and 89-5-33 shall apply to any trust instrument, memorandum, or amendment that is to be recorded under this subsection (b).

(5) The provisions of this subsection (b) shall have no application to trusts of personal property, nor to any trust arising or resulting by implication of law out of a conveyance of land. The failure to file a copy of the trust instrument, memorandum or deed of conveyance shall not affect the validity of the trust or the trust instrument.

SOURCES: Laws, 2014, ch. 421, § 29, eff from and after July 1, 2014.

§ 91-8-408. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. In addition, a person having a demonstrated interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SOURCES: Laws, 2014, ch. 421, § 30, eff from and after July 1, 2014.

§ 91-8-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in Section 91-8-408, Section 41-43-51 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one (21) years;

(2) A trust authorized by this section may be enforced by a person appointed under the terms of the trust, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SOURCES: Laws, 2014, ch. 421, § 31, eff from and after July 1, 2014.

§ 91-8-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by Sections 91-8-411 through 91-8-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be

achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 91-8-411 through 91-8-416, or trust combination or division under Section 91-8-417, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 91-8-413.

(c) Nothing in this section or this chapter is intended to create or imply a duty for a trustee to make or seek approval of a modification, termination, combination or division, and a trustee is not liable for not making or seeking approval of a modification, termination, combination or division.

SOURCES: Laws, 2014, ch. 421, § 32, eff from and after July 1, 2014.

§ 91-8-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon consent of all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust if the settlor does not object to the proposed modification or termination. The trustee shall notify the settlor of the proposed modification or termination not less than sixty (60) days before initiating the modification or termination. The notice of modification or termination must include:

(1) An explanation of the reasons for the proposed modification or termination;

(2) The date on which the proposed modification or termination is anticipated to occur; and

(3) The date, not less than sixty (60) days after the giving of notice, by which the settlor must notify the trustee of an objection to the proposed modification or termination.

(b) Following the settlor's death, a noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(d) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a qualified beneficiary who does not consent will be adequately protected.

(e) Solely for purposes of this section, the term “noncharitable irrevocable trust” refers to a trust that is not revocable by the settlor with respect to which:

(1) No federal or state income, gift, estate or inheritance tax charitable deduction was allowed upon transfers to the trust; and

(2) The value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value of the trust.

(f) Notwithstanding subsection (a), the trustee may seek court approval of a modification or termination.

SOURCES: Laws, 2014, ch. 421, § 33, eff from and after July 1, 2014.

§ 91-8-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor’s probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust’s administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

SOURCES: Laws, 2014, ch. 421, § 34, eff from and after July 1, 2014.

§ 91-8-413. Cy pres.

(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, obsolete or ineffective:

(1) The trust does not fail, in whole or in part;

(2) The trust property does not revert to the settlor or the settlor’s successors in interest; and

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner that fulfills as nearly as possible the settlor’s charitable intent and purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) The trust property is to revert to the settlor and the settlor is still living; or

(2) Fewer than twenty-one (21) years have elapsed since the date of the trust's creation.

SOURCES: Laws, 2014, ch. 421, § 35, eff from and after July 1, 2014.

§ 91-8-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than One Hundred Fifty Thousand Dollars (\$150,000.00) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property to or for the benefit of the beneficiaries, in such shares as the trustee, or the court in a court proceeding, determines, after taking into account the interests of income and remainder beneficiaries so as to conform as nearly as possible to the intention of the settlor, but a trust that qualified for the marital deduction for tax purposes shall only be distributed to the spouse of the settlor for whom the trust was created.

(d) This section does not apply to an easement for conservation or preservation.

(e) This section shall not limit the right of a trustee, acting alone, to terminate a trust in accordance with applicable provisions of the governing instrument.

SOURCES: Laws, 2014, ch. 421, § 36, eff from and after July 1, 2014.

§ 91-8-415. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

SOURCES: Laws, 2014, ch. 421, § 37, eff from and after July 1, 2014.

§ 91-8-416. Modification to achieve settlor's tax objectives.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

SOURCES: Laws, 2014, ch. 421, § 38, eff from and after July 1, 2014.

§ 91-8-417. Combination and division of trusts.

(a) After notice to the qualified beneficiaries, a trustee may combine two (2) or more trusts into a single trust or divide a trust into two (2) or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. In addition to any other combination or division the result of which does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust, a combination or division pursuant to subsection (d) of this section shall not be considered as impairing the rights of any beneficiary or adversely affecting the achievement of the purposes of the trust. If the trusts to be combined or divided have different trustees, the trustees may negotiate the terms of the combined or divided trusts, including which trusts will be the surviving trust or trusts, who will be the trustee or trustees of the surviving trust or trusts and any other matter relating to the operation of the surviving trust or trusts.

(b) In addition to combining two (2) or more trusts into a single trust or dividing a trust into two (2) or more separate trusts, a trustee, after notice to the qualified beneficiaries, may segregate by allocation to a separate account or trust a specific amount from, a portion of, or a specific asset included in the trust property of any trust to reflect a disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirement, to make federal tax elections, to reduce potential generation-skipping transfer tax liability, or for any other tax planning purposes or other reasons.

(c) A separate trust created by severance or segregation must be treated as a separate trust for all purposes from the effective date in which the severance or segregation is effective. The effective date of the severance or segregation may be retroactive. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, the trustee may consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts or accounts created.

(d) A trust or account created by consolidation, severance, or segregation under this section shall not be considered as impairing the rights of a beneficiary if the trust is held on terms and conditions that are substantially equivalent to the terms of the trust before consolidation, severance, or segregation so that the aggregate interests of each beneficiary are substantially equivalent to the beneficiary's interests in the trust or trusts before consolidation, severance, or segregation. In determining whether a beneficiary's aggregate interests are substantially equivalent, the trustee shall consider the economic value of those interests to the extent they can be valued, considering actuarial factors as appropriate. If a beneficiary's interest cannot be valued with any reasonable degree of certainty because of the nature of the trust property, the terms of the trust, or other reasons, the trustee shall base the determination upon such other factors as are reasonable and appropriate under the facts and circumstances applicable to that particular trust, including the purposes of the trust. However, the terms of any trust before

consolidation, severance or segregation which permit qualification of that trust for an applicable federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in the consolidated trust or in each of the separate trusts or accounts created by severance or segregation.

(e) A trustee who acts in good faith is not liable to any person for taking into consideration differences in federal tax attributes and other pertinent factors in administering trust property of any separate account or trust, in making tax elections, and making distributions pursuant to the terms of the separate trust.

(f) Income earned on a consolidated or severed or segregated amount, portion, or specific asset after the consolidation or severance is effective passes with that amount, portion or specific asset.

(g) This section applies to all trusts whenever created, whether before, on, or after July 1, 2014, and whether the trusts are inter vivos or testamentary, are created by the same or different instruments, by the same or different persons and without regard to where created or administered.

(h) This section does not limit the right of a trustee acting in accordance with the applicable provisions of the governing instrument to divide or consolidate trusts.

(i) Nothing contained in this section shall be construed as granting to any trustee a general power of appointment over any trust not otherwise expressly granted in the trust instrument.

SOURCES: Laws, 2014, ch. 421, § 39, eff from and after July 1, 2014.

ARTICLE 5.

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS [RESERVED].

ARTICLE 6.

REVOCABLE TRUSTS.

SEC.

- | | |
|-----------|--|
| 91-8-601. | Capacity of settlor of revocable trust. |
| 91-8-602. | Revocation or amendment of revocable trust. |
| 91-8-603. | Settlor's powers; powers of withdrawal. |
| 91-8-604. | Limitation on action contesting validity of revocable trust; distribution of trust property. |

§ 91-8-601. Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. To be effective as a post-death disposition of property transferred during the transferor's life or by the transferor's will to a trust of which the transferor is the settlor or deemed to be the settlor, neither a revocable nor an irrevocable trust existing on or executed after July 1, 2014, has to be executed with the formalities of a will.

SOURCES: Laws, 2014, ch. 421, § 40, eff from and after July 1, 2014.

§ 91-8-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection (a) does not apply to a trust created under an instrument executed before July 1, 2014.

(b) If a revocable trust is created or funded by more than one (1) settlor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution;

(3) At the death of one (1) settlor, each surviving settlor shall have the right to revoke the trust as to the surviving settlor's portion of the trust as determined by the type of property in accordance with subsection (b) (1) or (2); and

(4) Upon the revocation or amendment of the trust by fewer than all of the settlors or upon the death of one (1) of the settlors, the trustee shall promptly notify the other settlors of the revocation, amendment or death.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) Any other method manifesting clear and convincing evidence of the settlor's intent; however, a written revocable trust may only be amended and revoked by a later written instrument delivered to the trustee.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs. However, with respect to community property under subsection (b) (1), the trustee shall deliver the property one-half (½) to each spouse unless the trust instrument specifically states otherwise.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator or guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions

made and other actions taken on the assumption that the trust had not been amended or revoked.

SOURCES: Laws, 2014, ch. 421, § 41, eff from and after July 1, 2014.

§ 91-8-603. Settlor's powers; powers of withdrawal.

(a) While a trust is revocable rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one (1) settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

SOURCES: Laws, 2014, ch. 421, § 42, eff from and after July 1, 2014.

§ 91-8-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) A person may commence a judicial proceeding to contest the validity of all or part of the terms of a trust that was revocable at the settlor's death within the earlier of:

(1) Two (2) years after the settlor's death; or

(2) One hundred and twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is subject to liability for doing so only if:

(1) The trustee knows of a pending judicial proceeding contesting the validity of all or part of the terms of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty (60) days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined by a court proceeding to be invalid, in whole or in part, is liable to return to the court any distribution received for proper distribution to the extent that the invalidity applies to the distribution. If the beneficiary refuses to return the distribution after being ordered by the court, the beneficiary shall be liable for all costs incurred for recovery of the distribution.

SOURCES: Laws, 2014, ch. 421, § 43, eff from and after July 1, 2014.

ARTICLE 7.

OFFICE OF TRUSTEE.

SEC.

91-8-701.	Accepting or declining trusteeship.
91-8-702.	Trustee's bond.
91-8-703.	Cotrustees.
91-8-704.	Vacancy in trusteeship; appointment of successor.
91-8-705.	Resignation of trustee.
91-8-706.	Removal of trustee.
91-8-707.	Delivery of property by former trustee.
91-8-708.	Compensation of trustee, trust advisor and trust protector.
91-8-709.	Reimbursement of expenses.
91-8-710.	Directed trusts.
91-8-711.	Directed trusts; accepting or declining fiduciary appointment.
91-8-712.	Directed trusts; fiduciary's bond.
91-8-713.	Vacancy; directed trusts.
91-8-714.	Directed trusts; resignation of fiduciary.
91-8-715.	Directed trusts; removal of fiduciary.

§ 91-8-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

SOURCES: Laws, 2014, ch. 421, § 44, eff from and after July 1, 2014.

§ 91-8-702. Trustee's bond.

(a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the

beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A state or national bank, savings institution, or trust company authorized to exercise fiduciary powers and regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, the Mississippi Department of Banking and Consumer Finance, or equivalent state banking supervisors need not give bond, even if required by the terms of the trust.

SOURCES: Laws, 2014, ch. 421, § 45, eff from and after July 1, 2014.

§ 91-8-703. Cotrustees.

(a) Cotrustees who are unable to reach a unanimous decision after consultation among all the cotrustees may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function and consult with the other cotrustees unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust instrument expressly require the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

- (1) Prevent a cotrustee from committing a serious breach of trust; and
- (2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

(i) A trustee shall keep each cotrustee and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee has knowledge that each such cotrustee or other fiduciary does not have knowledge of the trustee's actions, or regarding other material information or the availability of such information, related to the administration of the trust that

would be reasonably necessary for each cotrustee or other fiduciary to perform his or her duties as a trustee or other fiduciary of the trust.

SOURCES: Laws, 2014, ch. 421, § 46, eff from and after July 1, 2014.

§ 91-8-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

- (1) A person designated as trustee rejects the trusteeship;
- (2) A person designated as trustee cannot be identified or does not exist;
- (3) A trustee resigns;
- (4) A trustee is disqualified or removed;
- (5) A trustee dies; or
- (6) A conservator or guardian is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (1) By a person designated in the terms of the trust to act as successor trustee;
- (2) By a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (1) By a person designated in the terms of the trust to act as successor trustee;
- (2) By a person selected by the unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General does not affirmatively object within thirty (30) days of receipt of notice of the person selected; or
- (3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

SOURCES: Laws, 2014, ch. 421, § 47, eff from and after July 1, 2014.

§ 91-8-705. Resignation of trustee.

(a) A trustee may resign:

- (1) Upon at least thirty (30) days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
- (2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

SOURCES: Laws, 2014, ch. 421, § 48, eff from and after July 1, 2014.

§ 91-8-706. Removal of trustee.

(a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 91-8-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

SOURCES: Laws, 2014, ch. 421, § 49, eff from and after July 1, 2014.

§ 91-8-707. Delivery of property by former trustee.

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall, within a reasonable time, deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

SOURCES: Laws, 2014, ch. 421, § 50, eff from and after July 1, 2014.

§ 91-8-708. Compensation of trustee, trust advisor and trust protector.

(a) If the terms of a trust do not specify the trustee's, trust advisor's, or trust protector's compensation, and if the settlor, if living, or otherwise a majority of the qualified beneficiaries as defined in Section 91-8-103, have not otherwise agreed with the trustee, trust advisor, or trust protector, a trustee, trust advisor, or trust protector is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's, trust advisor's, or trust protector's compensation, the trustee, trust advisor, or trust protector is entitled to be compensated as specified in the trust, but the court may allow more or less compensation if:

(1) The duties of the trustee, trust advisor, or trust protector are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust would be unreasonably low or high.

(c) Factors for the court to consider in deciding upon a trustee's, trust advisor's, or trust protector's compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any management or sale of real property or closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.

(d) Subject to the court's authority as provided in subsection (b), regardless of its form of entity, the fees set forth in the published fee schedule of a trustee, trust advisor, or trust protector that is regulated by the Mississippi Department of Banking and Consumer Finance, the equivalent regulatory agency of another state, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.

SOURCES: Laws, 2014, ch. 421, § 51, eff from and after July 1, 2014.

§ 91-8-709. Reimbursement of expenses.

(a) A trustee, trust advisor, or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust, including the defense or prosecution of any action, whether successful or not, unless the trustee is determined to have willfully or wantonly committed a material breach of trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee, trust advisor, or trust protector or by a person named in Section 91-8-701(c)(1) of money for the protection of the trust

gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SOURCES: Laws, 2014, ch. 421, § 52, eff from and after July 1, 2014.

§ 91-8-710. Directed trusts.

If the terms of the trust require a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector, and the trustee, trust advisor, or trust protector acts in accordance with the direction, then the trustee, trust advisor, or trust protector so directed shall be treated as an excluded fiduciary.

SOURCES: Laws, 2014, ch. 421, § 53, eff from and after July 1, 2014.

§ 91-8-711. Directed trusts; accepting or declining fiduciary appointment.

(a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(a), may accept its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-701(a).

(b) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(b), may reject its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-701(b).

(c) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(c), may, without accepting its appointment as the respective fiduciary, carry out the appropriate activities relative to the respective fiduciary as are provided for a trustee under Section 91-8-701(c).

SOURCES: Laws, 2014, ch. 421, § 54, eff from and after July 1, 2014.

§ 91-8-712. Directed trusts; fiduciary's bond.

(a) Section 91-8-702 applies to trust advisors, trust protectors, or other fiduciaries other than cotrustees, the cotrustees already being provided for in Section 91-8-702.

(b) When exercising its powers under this section, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

SOURCES: Laws, 2014, ch. 421, § 55, eff from and after July 1, 2014.

§ 91-8-713. Vacancy; directed trusts.

(a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor or trust protector, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor or trust protector, until such time that the vacancy in the office of trust advisor or trust protector, as applicable, is filled.

(b) The vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by Section 91-8-704(c) if the trust is a noncharitable trust, or as provided by Section 91-8-704(d) if the trust is a charitable trust. Section 91-8-704(e) shall also apply relative to trust advisors and trust protectors in the same manner as that subsection does to trustees and vacancies in trusteeship.

(c) Notwithstanding subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor or trust protector and conferred upon the trustee by subsection (a) for the one-hundred-twenty-day period immediately following the date the trustee obtains knowledge of the vacancy.

SOURCES: Laws, 2014, ch. 421, § 56, eff from and after July 1, 2014.

§ 91-8-714. Directed trusts; resignation of fiduciary.

(a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, a cotrustee's resignation already being provided for in Section 91-8-705, may resign its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-705.

(b) When exercising its powers under this section relative to resignation, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

SOURCES: Laws, 2014, ch. 421, § 57, eff from and after July 1, 2014.

§ 91-8-715. Directed trusts; removal of fiduciary.

(a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, a cotrustee's removal already being provided for in Section 91-8-706, may be removed as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-706.

(b) When exercising its powers under this section relative to removal of the respective fiduciary, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

SOURCES: Laws, 2014, ch. 421, § 58, eff from and after July 1, 2014.

ARTICLE 8.

DUTIES AND POWERS OF TRUSTEE.

SEC.

91-8-801.	Duty to administer trust.
91-8-802.	Duty of loyalty.
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91-8-815.	General powers of trustee.
91-8-816.	Specific powers of trustee.
91-8-817.	Distribution upon termination.

§ 91-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust until such time as the trust terminates or a successor trustee is appointed and all assets are delivered in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

SOURCES: Laws, 2014, ch. 421, § 59, eff from and after July 1, 2014.

§ 91-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 91-8-1012 or as may otherwise be allowed under Mississippi law, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (1) The transaction was authorized by the terms of the trust;
- (2) The transaction was approved by the court;
- (3) The beneficiary did not commence a judicial proceeding within the time allowed by Section 91-8-1005;
- (4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 91-8-1009; or
- (5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (1) The trustee's spouse;
- (2) The trustee's descendants, siblings, parents, or their spouses;
- (3) An agent or attorney of the trustee; or
- (4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e) In addition to all other permissible investments and delegatable duties listed in this title, so long as they are fairly priced and in accordance with the interest of the beneficiaries and the interests of the fiduciary's appointment and otherwise comply with the Mississippi Uniform Prudent Investor Act or Article 12 of this chapter, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment, as well as delegate to an affiliate or other agent associated with the fiduciary and, upon satisfaction of the conditions stated in subsection (g), the fiduciary may receive fiduciary compensation from the account at the same rate as the fiduciary would otherwise be entitled to be compensated. These activities shall occur without any presumption of a conflict between personal and fiduciary interests of the trustee or other fiduciary.

(f) As used in this section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the fiduciary.

(2) "Affiliated investment" means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker or in any other capacity for which it receives or has received a fee or commission from the investment or an investment acquired or disposed of in a transaction for which the fiduciary or an affiliate of the fiduciary receives or has received a fee or commission. "Affiliated investment" also means an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the fiduciary, or any of its affiliates.

(3) "Delegate to an affiliate or associated agent" means a proper delegation of any duty of the fiduciary to any person or entity that is affiliated with, or associated with, the fiduciary. The action of doing any of the above shall be known as a "delegation to an affiliate or associated agent."

(4) "Fee or commission" means compensation paid to a fiduciary or an affiliate thereof on account of its services to or on behalf of an investment.

(5) For purposes of this section, "fiduciary" means any fiduciary as defined in Section 91-8-103, as well as any other fiduciary.

(6) “Investment” shall mean any security as defined in Section 2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of Section 2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of the Mississippi Uniform Prudent Investor Act or by the terms of the governing instrument, including by way of illustration and not limitation: shares or interests in a public or private investment fund, including, but not limited to, a public or private investment fund organized as a limited partnership, limited liability company, statutory or common-law business trust, real estate investment trust, joint venture or other general or limited partnership, or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(g) A fiduciary seeking compensation pursuant to subsection (e) shall, as is applicable relative to the fiduciary’s particular appointment, disclose either: to those persons entitled to be kept informed about the administration of a trust under Section 91-8-813(a), subject to the provisions of Sections 91-8-813(d) and 91-8-105(d); to each principal in an agency relationship; or to all current recipients of statements of any other fiduciary account not described above; all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or delegation to an affiliate or associated agent. The disclosure required under this subsection (g) may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated, either as a percentage of the assets invested or by some other method. The disclosure shall be made at least annually unless there has been no increase in the rate at which fees or commissions are calculated since the most recent disclosure. Notwithstanding this subsection (g), no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or to perform the delegation to an affiliate or associated agent.

(h) A fiduciary that has complied with subsection (g), whether by making the applicable disclosure or by relying on the terms of a governing instrument or court order, shall have full authority to administer an affiliated investment, including the authority to vote proxies thereon, without regard to the affiliation between the fiduciary and the investment or the fiduciary and delegatee, as the case may be.

(i) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(j) The following transactions, if fairly priced and in accordance with the interest of the beneficiaries and the purposes of the trust, are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest if any investment made pursuant to the transaction otherwise complies with the Mississippi Prudent Investor Act:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;

(2) Payment of reasonable compensation to the trustee, or any of its affiliates;

(3) A transaction between a trust and another trust, decedent's estate, guardianship, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate;

(5) An advance by the trustee of money for the protection of the trust;

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliates, provides services in a capacity other than as a trustee provided that any investment made pursuant to the transaction otherwise complies with the Mississippi Prudent Investor Act;

(7) The placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(8) Any loan from the trustee or its affiliate;

(9) An investment in an insurance contract purchased from an insurance agency owned by, or affiliated with the trustee, or any of its affiliates; or

(10) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee.

(k) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

SOURCES: Laws, 2014, ch. 421, § 60, eff from and after July 1, 2014.

Cross References — Mississippi Uniform Prudent Investor Act, see § 91-8-901 and § 91-9-601 et seq.

Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

Federal Aspects — Section 2(a)(1) of the Securities Act of 1933, see 15 U.S.C. § 77b(a)(1).

Section 2(i) of the Commodity Exchange Act, see 7 U.S.C. § 2(i).

The Investment Company Act of 1940, see 15 U.S.C. § 80a-1 et seq.

§ 91-8-803. Impartiality.

If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests and the purposes of the trust.

SOURCES: Laws, 2014, ch. 421, § 61, eff from and after July 1, 2014.

§ 91-8-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

SOURCES: Laws, 2014, ch. 421, § 62, eff from and after July 1, 2014.

§ 91-8-805. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

SOURCES: Laws, 2014, ch. 421, § 63, eff from and after July 1, 2014.

§ 91-8-806. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

SOURCES: Laws, 2014, ch. 421, § 64, eff from and after July 1, 2014.

§ 91-8-807. Delegation by trustee.

(a) A trustee may delegate duties and powers that a prudent trustee could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care, skill, and caution to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for an action or inaction of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

SOURCES: Laws, 2014, ch. 421, § 65, eff from and after July 1, 2014.

§ 91-8-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust or contrary to the normal practice of the trustee in regard to the action requested.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) If a person holds a power to direct pursuant to Article 12 of this chapter, that person is a trust advisor, trust protector, or both. The power holder is subject to all the provisions of Article 12, including any duties prescribed by Article 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under Article 12 is relieved of any duty or any liability, or is otherwise protected under Article 12, shall be so relieved and otherwise protected.

SOURCES: Laws, 2014, ch. 421, § 66, eff from and after July 1, 2014.

Cross References — Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

§ 91-8-809. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

SOURCES: Laws, 2014, ch. 421, § 67, eff from and after July 1, 2014.

§ 91-8-810. Recordkeeping and identification of trust property.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two (2) or more separate trusts.

SOURCES: Laws, 2014, ch. 421, § 68, eff from and after July 1, 2014.

§ 91-8-811. Enforcement and defense of claims.

(a) A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

(b) A trustee may abandon or assign any claim that it believes is unreasonable to enforce to one or more of the beneficiaries of the trust holding the claim.

SOURCES: Laws, 2014, ch. 421, § 69, eff from and after July 1, 2014.

§ 91-8-812. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee. No successor trustee appointed after the examination of the accounts of a trustee or the waiver of the examination by the beneficiaries shall be responsible for the acts and omissions of the prior trustee.

SOURCES: Laws, 2014, ch. 421, § 70, eff from and after July 1, 2014.

§ 91-8-813. Duty to inform and report.

(a)(1) A trustee shall keep the beneficiaries of the trust that are current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

(2) Unless unreasonable under the circumstances, a trustee shall respond in a reasonable amount of time to a qualified beneficiary's request for information related to the administration of the trust. Additionally, a qualified beneficiary shall reimburse the trustee for any reasonable expenses incurred in responding to requests for information.

(3) The requirements of subsection (a) shall also apply to the benefit of anyone who, in a capacity other than that of a fiduciary, holds a power of appointment.

(b) The trustee of an irrevocable or nongrantor trust within sixty (60) days after the acceptance and funding of a trust, excluding nominal funding for the trust to have corpus or the depositing of insurance policies on the life of a living person, shall notify each current income beneficiary, each vested ultimate beneficiary of a remainder interest and anyone who, in a capacity other than that of a fiduciary, holds a power of appointment, that the trust has been established.

(1) The required notice shall:

(A) Be sent by first-class mail or personal delivery; and

(B) Consist of either a complete copy of the document establishing the trust together with the trustee's name, address and telephone number or an abstract of the trust, as the trustee, in the trustee's absolute discretion, may choose.

(2) The abstract shall contain:

(A) The name, address and telephone number of each trustee; and

(B) If for a current income beneficiary:

(i) The number of other current income beneficiaries;

(ii) Whether distributions of income are required or discretionary; and

(iii) Whether distributions of principal are permitted and, if so, for what purpose or purposes; and

(C) If for a remainder beneficiary:

(i) The number of other remainder beneficiaries; and

(ii) The conditions that must be met before the beneficiary's share is distributable.

(D) If for anyone who, in a capacity other than that of a fiduciary, holds a power of appointment, all of the information required by subsection (b) necessary or beneficial for that person to effectively determine whether or not to exercise that power of appointment.

(c) Upon the termination of an interest of any one or more of the current income beneficiaries:

(1) The trustee shall similarly notify the income beneficiaries who are takers of the terminated interest of their interest by sending or delivering them the notice required in subsection (b); and

(2) If at that time the period described in subsection (b) has lapsed, the trustee shall similarly notify anyone who, in a capacity other than that of a fiduciary, holds a power of appointment by sending or delivering to the person the notice required in subsection (b).

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given. Anyone who, in a capacity other than that of a fiduciary, holds a power of appointment has the same power as provided a beneficiary in this subsection to waive reports and other information and to withdraw a waiver previously given.

(e) Subsections (a) and (b) shall not apply to the extent that those provisions are waived or modified in accordance with Section 91-8-105(d).

(f) Subsection (a)(1) and subsection (b) do not apply to a trust created under a trust agreement that became irrevocable before July 1, 2014. Trust law in effect before July 1, 2014, regarding the subject matter of subsection (a)(1) and subsection (b) shall continue to apply to those trusts.

(g) If the trustee of a trust is bound by any written confidentiality restrictions with respect to an asset of a trust, a trustee may require that any beneficiary who is eligible to receive information pursuant to this or any other section of this chapter about the asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving the information from the trustee.

(h) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing the information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the specified beneficiaries under subsection (a) without regard to whether the terms of the trust relieve the excluded fiduciary from providing the information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subsection shall affect the limitation on the liability of any excluded fiduciary provided by Article 12 of this chapter.

SOURCES: Laws, 2014, ch. 421, § 71, eff from and after July 1, 2014.

§ 91-8-814. Exercise of powers over discretionary and other interests; tax savings.

(a) Relative to exercise of powers over discretionary and other interests:

(1) “Improper motive” means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee’s self-interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor’s spouse is named as a beneficiary, the settlor’s spouse is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor’s spouse, including the settlor’s obligation of support, before making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary’s resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee’s distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act, if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three (3) circumstances listed in subsection (b) (2), a court has no jurisdiction to review the trustee's discretion or to force a distribution; and

(5) Absent express language in the trust instrument to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act, if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power that is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

SOURCES: Laws, 2014, ch. 421, § 72, eff from and after July 1, 2014.

§ 91-8-815. General powers of trustee.

(a) A trustee, without authorization by the court, may exercise:

(1) Powers conferred by the terms of the trust; and

(2) Except as limited by the terms of the trust:

(A) All powers over the trust property which an unmarried competent owner has over individually owned property;

(B) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) Any other powers conferred by this chapter.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

SOURCES: Laws, 2014, ch. 421, § 73, eff from and after July 1, 2014.

§ 91-8-816. Specific powers of trustee.

(a) Any references contained in a will or trust incorporating by reference the powers enumerated in Section 91-9-101 et seq. will incorporate by reference the powers contained in this section.

(b) Unless the terms of the instrument expressly provide otherwise and without limiting the authority conferred by Section 91-8-815, a trustee may:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) Acquire or sell property, for cash or on credit, at public or private sale;

(3) Exchange, partition, or otherwise change the character of trust property;

(4) Deposit trust money in an account in a regulated financial-service institution;

(5) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) Deposit the securities with a depository or other regulated financial-service institution;

(8) With respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to, or improvements in,

buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) With respect to possible liability for violation of environmental law:

(A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) Compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) Exercise elections with respect to federal, state, and local taxes, including allocating capital gains to distributable net income;

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under

the circumstances, where the trustee has a lien on future distributions for repayment of those loans;

(19) Pledge trust property to guarantee loans made by others to the beneficiary;

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the conservator or guardian of the beneficiary's estate or, if there is no conservator or guardian of the beneficiary's estate, to the conservator or guardian of the beneficiary;

(B) Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act, and, for that purpose, creating a custodianship or custodial trust;

(C) If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation and basis for income tax purposes;

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) On termination of the trust, exercise the powers appropriate to windup the administration of the trust and distribute the trust property to the persons entitled to it;

(27) Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; and

(28)(A) A trustee may insure the life of any person in which the trustee of the trust has an insurable interest as set forth in Section 83-5-251.

(B) A trustee may retain any life insurance policy contributed to a trust by a settlor, or purchased by the trustee upon the request of the settlor, as an asset of the trust without regard to any lack of diversification caused thereby and without regard to the terms and conditions of the life insurance policy. The trustee shall not be liable for lack of diversification to any beneficiary of a trust for the trustee's retention of the life insurance policy.

(C) With respect to a life insurance policy owned by the trust a trustee may:

- (i) Borrow funds from any party, including an insurance company, for the purpose of paying premiums on any policy of insurance owned by the trust and enter into a "split dollar" or other similar arrangement;
- (ii) Collaterally assign any policy to a creditor of the trust;
- (iii) Exercise any and all rights under any life insurance policy, including the power to pay, forego or adjust the amount of any premium payments, adjust the type and amount of death benefit, receive or apply dividends to premiums or purchase additional insurance, and allocate policy values among any subaccounts available under any variable or similar policy; and
- (iv) With the consent of the insured, to sell any policy to a third party in a life settlement or viatical settlement transaction.

SOURCES: Laws, 2014, ch. 421, § 74, eff from and after July 1, 2014.

Cross References — Uniform Transfers to Minors Act, see § 91-20-1 et seq.

§ 91-8-817. Distribution upon termination.

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection. For the purpose of determining the date a proposed distribution was sent, if exact confirmation is unavailable it can be assumed it was received five (5) days after the date of mailing.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

- (1) It was induced by improper conduct of the trustee; or
- (2) The beneficiary, at the time of the release, did not know of the material facts relating to the alleged breach and the trustee had actual knowledge of the facts relating to the alleged breach.

SOURCES: Laws, 2014, ch. 421, § 75, eff from and after July 1, 2014.

ARTICLE 9.

UNIFORM PRUDENT INVESTOR ACT.

SEC.

91-8-901. Prudent Investor Act incorporated by reference.

§ 91-8-901. Prudent Investor Act incorporated by reference.

Title 91, Chapter 9, Article 13, the Mississippi Uniform Prudent Investor Act, is incorporated in this chapter by reference.

SOURCES: Laws, 2014, ch. 421, § 76, eff from and after July 1, 2014.

ARTICLE 10.

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

SEC.

- 91-8-1001. Remedies for breach of trust.
- 91-8-1002. Damages for breach of trust.
- 91-8-1003. Damages in absence of breach.
- 91-8-1004. Attorney's fees and costs.
- 91-8-1005. Limitation of action against trustee by a beneficiary, a trustee, trust advisor or trust protector.
- 91-8-1006. Reliance on trust instrument.
- 91-8-1007. Event affecting administration or distribution.
- 91-8-1008. Exculpation of trustee.
- 91-8-1009. Beneficiary's consent, release, or ratification.
- 91-8-1010. Limitation on personal liability of trustee.
- 91-8-1011. Interest as general partner.
- 91-8-1012. Protection of person dealing with trustee.
- 91-8-1013. Certification of trust.
- 91-8-1014. Enforcement of no-contest, in terrorem or forfeiture provisions.

§ 91-8-1001. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

- (1) Compel the trustee to perform the trustee's duties;
- (2) Enjoin the trustee from committing a breach of trust;
- (3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
- (4) Order a trustee to account;
- (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) Suspend the trustee;

- (7) Remove the trustee as provided in Section 91-8-706;
- (8) Reduce or deny compensation to the trustee;
- (9) Subject to Section 91-8-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) Order any other appropriate relief whether provided elsewhere in this chapter, available at common law or under equity principles.

SOURCES: Laws, 2014, ch. 421, § 77, eff from and after July 1, 2014.

§ 91-8-1002. Damages for breach of trust.

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for:

(1) The greater of:

(A) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(B) The profit the trustee made by reason of the breach; and

(2) Any measure of damages otherwise provided by law.

(b) Except as otherwise provided in this subsection (b), if more than one (1) trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

SOURCES: Laws, 2014, ch. 421, § 78, eff from and after July 1, 2014.

§ 91-8-1003. Damages in absence of breach.

Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

SOURCES: Laws, 2014, ch. 421, § 79, eff from and after July 1, 2014.

§ 91-8-1004. Attorney's fees and costs.

(a) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

(b) In a nonjudicial proceeding involving the administration of a trust, the trustee may pay fees, other reasonable costs, and expenses from trust assets where all of the parties to the proceeding agree in writing.

(c) In a mediation or arbitration proceeding involving the administration of a trust, the mediator or arbitrator may award fees, other reasonable costs, and expenses against the assets of the trust.

SOURCES: Laws, 2014, ch. 421, § 80, eff from and after July 1, 2014.

§ 91-8-1005. Limitation of action against trustee by a beneficiary, a trustee, trust advisor or trust protector.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(d) A trustee may not commence a proceeding against a cotrustee or a former trustee for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a cotrustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the cotrustee or a former trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against a trustee or a former trustee for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that

the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against a trustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trustee or a former trustee;
- (2) The termination of the beneficiary's interest in the trust; or
- (3) The termination of the trust.

(j) Notwithstanding subsections (d) through (i), no trustee, trust advisor, or trust protector may commence a proceeding against a trustee or a former trustee if, under subsections (a) through (c) of this section, none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for the breach of trust.

SOURCES: Laws, 2014, ch. 421, § 81, eff from and after July 1, 2014.

Editor's Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (j) by substituting "subsections (a) through (c) of this section" for "Section 91-8-1005(a) through (c)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 91-8-1006. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

SOURCES: Laws, 2014, ch. 421, § 82, eff from and after July 1, 2014.

§ 91-8-1007. Event affecting administration or distribution.

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

SOURCES: Laws, 2014, ch. 421, § 83, eff from and after July 1, 2014.

§ 91-8-1008. Exculpation of trustee.

(a) A provision of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

- (1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) Except for provisions intended to provide protection for carrying out a stated purpose in the trust instrument, an exculpatory provision drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory provision is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

SOURCES: Laws, 2014, ch. 421, § 84, eff from and after July 1, 2014.

§ 91-8-1009. Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the material facts relating to the breach and the trustee had actual knowledge of the facts relating to the alleged breach.

SOURCES: Laws, 2014, ch. 421, § 85, eff from and after July 1, 2014.

§ 91-8-1010. Limitation on personal liability of trustee.

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) Except as otherwise provided in subsection (a) or (c), the debts, obligations and liabilities incurred by a trustee by reason of the ownership, management, or control of trust property in the trustee's fiduciary capacity, shall be enforceable solely against the trust and its property, without any obligation or liability personally being borne by any trustee of the trust.

(c) Except as otherwise limited by state law, a trustee is personally liable for torts committed in the course of administering a trust only if the trustee is personally at fault.

(d) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

SOURCES: Laws, 2014, ch. 421, § 86, eff from and after July 1, 2014.

§ 91-8-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act, Title 79, Chapter 13, Mississippi Code of 1972, or the Mississippi Limited Partnership Act, Title 79, Chapter 14, Mississippi Code of 1972.

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

SOURCES: Laws, 2014, ch. 421, § 87, eff from and after July 1, 2014.

Cross References — Uniform Partnership Act, see § 79-13-101 et seq.
Mississippi Limited Partnership Act, see § 79-14-101 et seq.

§ 91-8-1012. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

SOURCES: Laws, 2014, ch. 421, § 88, eff from and after July 1, 2014.

§ 91-8-1013. Certification of trust.

(a) Instead of furnishing a copy of the trust instrument to any person to evidence the existence and validity of the trust, the trustee may furnish to the person a certification of trust, signed by the trustee or trustees having signature authority as identified in paragraph (5) of this subsection, attested by a notary public, and shall contain the following:

(1) An affirmation of the current existence of the trust and the date on which the trust came into existence;

(2) The identity of the settlor or settlors;

(3) The identity and address of the currently acting trustee or trustees and may contain the identity and address of the named successor trustee or trustees or a statement that no successor is named;

(4) The administrative or managerial powers of the trustee in a pending transaction or relevant to the request;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) When there are multiple trustees or multiple successor trustees, the signature authority of the trustees indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee;

(7) Where there are successor trustees designated, a statement detailing the conditions for their succession or a statement that a third party may rely on the authority of one or more successors without proof of their succession;

(8) The trust's Taxpayer Identification Number, whether a social security number or Employer Identification Number, but only if the trust's identification number is essential to the transaction for which the request for the trust document is made;

(9) The name in which title to trust property may be taken; and

(10) A statement that, to the best of the trustee's knowledge, the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(b) The certification of trust shall not be required to contain the dispositive provisions of a trust that set forth the distribution of the trust estate.

(c) The trustee offering the certification of trust may provide copies of all or any part of the trust document and amendments, if any. Nothing in this section is intended to require or imply an obligation to provide dispositive provisions of the trust or a copy of the entire trust documents and amendments.

(d) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of

the trust instrument is held by the person relying on the trust certification. Nothing contained in this section shall limit the rights of the beneficiaries of the trust against the trustee. Any person relying on the certification of trust shall be indemnified from the assets of the trust to the extent of the share of the trust attributable to the beneficiary or beneficiaries bringing any action against the person for any costs, damage, attorney fees, or other expenses incurred in defending any action against the person arising for the transaction to which a certification of trust related.

(e) A person's failure to request a certification of trust does not affect the protections provided that person in this section. No inference that the person has not acted in good faith or that the person was negligent may be drawn from the failure of the person to request a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance on a certification of trust under circumstances where the requirements of this section are not satisfied.

(f) Nothing in this section shall be construed to require a third party, when presented with a trust certificate, to enter into a contract with a trustee relating to trust assets or obligations, or to preclude a third party from demanding as a precondition to any contract that the trustee provide additional information in order to clarify any ambiguities or inconsistencies in the trust certificate.

(g) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

SOURCES: Laws, 2014, ch. 421, § 89, eff from and after July 1, 2014.

§ 91-8-1014. Enforcement of no-contest, in terrorem or forfeiture provisions.

(a) For the purposes of this section, "no-contest provision" includes a "no-contest provision," "in terrorem provision" or "forfeiture provision" of a trust instrument. A "no-contest provision" means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of the trust who, directly or indirectly, initiates or otherwise pursues:

(1) Any action to contest the validity of the trust or the terms of the trust;

(2) Any action to set aside or vary the terms of the trust;

(3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

(4) Any other act or proceedings to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

(b) With regard to whether the beneficiary sought, received or relied upon legal counsel, a no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the beneficiary's good or bad faith in taking the action that would justify the complete or partial forfeiture of the beneficiary's interest in the trust under the terms of the

no-contest provision unless probable cause exists for the beneficiary taking such action on the grounds of:

- (1) Fraud;
- (2) Duress;
- (3) Revocation;
- (4) Lack of testamentary capacity;
- (5) Undue influence;
- (6) Mistake;
- (7) Forgery; or
- (8) Irregularity in the execution of the trust instrument.

(c) Subsection (b) shall not apply to:

(1) Any action brought solely to challenge the acts of the trustee or other fiduciary of the trust to the extent that the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust;

(2) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

(3) Any agreement among the beneficiaries and any other interested persons in settlement of a dispute or resolution of any other matter relating to the trust, including, without limitation, any nonjudicial settlement agreement;

(4) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(5) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(6) Any action brought by the Attorney General for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) Pursuant to this section, courts shall enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible.

SOURCES: Laws, 2014, ch. 421, § 90, eff from and after July 1, 2014.

ARTICLE 11.

MISCELLANEOUS PROVISIONS.

SEC.

- 91-8-1101. Uniformity of application and construction.
- 91-8-1102. Electronic records and signatures.
- 91-8-1103. Severability clause.
- 91-8-1104 and 91-8-1105. [Reserved]
- 91-8-1106. Application to existing relationships.
- 91-8-1107. Alter ego.
- 91-8-1108. Dominion and control over a trust.

91-8-1109. Protection of special needs trusts and other similar trusts for disabled persons.

§ 91-8-1101. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SOURCES: Laws, 2014, ch. 421, § 91, eff from and after July 1, 2014.

§ 91-8-1102. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 USC Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

SOURCES: Laws, 2014, ch. 421, § 92, eff from and after July 1, 2014.

§ 91-8-1103. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 2014, ch. 421, § 93, eff from and after July 1, 2014.

§§ 91-8-1104 and 91-8-1105. [Reserved].

§ 91-8-1106. Application to existing relationships.

(a) Except as otherwise provided in this chapter:

(1) This chapter applies to all trusts created before, on, or after July 1, 2014;

(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2014;

(3) This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2014, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2014, unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) An act done before July 1, 2014, is not affected by this chapter.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2014, that statute continues to apply to the right even if it has been repealed or superseded.

SOURCES: Laws, 2014, ch. 421, § 94, eff from and after July 1, 2014.

§ 91-8-1107. Alter ego.

(a) Absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee of such trust.

(b) None of the following factors, by themselves or in combination, may be considered sufficient evidence for a court to conclude that the settlor controls a trustee, or is the alter ego of a trustee of such trust:

(1) Any combination of the factors listed in Section 91-8-1108 regarding dominion and control over a trust;

(2) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to the trust as a trustee, a trust advisor or a trust protector, when in fact the settlor was not a trustee, trust advisor or trust protector;

(3) Making any requests for distributions on behalf of beneficiaries; or

(4) Making any requests to the trustee to hold, purchase, or sell any trust property.

SOURCES: Laws, 2014, ch. 421, § 95, eff from and after July 1, 2014.

§ 91-8-1108. Dominion and control over a trust.

In the event a person challenges a settlor's or a beneficiary's influence over a trust, none of the following factors, alone or in combination, shall enter into a determination that dominion and control over a trust exists:

(1) The settlor or a beneficiary is serving as a trustee, a trust advisor, a trust protector, or other fiduciary as described in this Title 91;

(2) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee, a trust advisor, a trust protector, or other fiduciary;

(3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or holds any other managerial function relative to any type of entity specified in this section, or relative to any other type of entity not so specified, and part or all of the trust property consists of an interest in such entity;

(4) A person related by blood or adoption to the settlor or a beneficiary is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(5) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(6) A business associate is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(7) A beneficiary holds any power of appointment over any or all of the trust property;

(8) The settlor holds a power to substitute property of equivalent value for property held by the trust, regardless of whether such power is:

(A) Held in a fiduciary or nonfiduciary capacity;

(B) Exercisable with or without the approval of any person in a fiduciary capacity; or

(C) Exercisable with or without the approval of any person having an interest adverse to such settlor;

(9) A trustee, a trust advisor, a trust protector or other fiduciary has the power to loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;

(10) Any language relative to the power to make any distribution provides for any discretion relative to such distribution;

(11) The trust has only one (1) beneficiary eligible for current distributions; or

(12) The beneficiary is serving as a cotrustee, or as a trust advisor or trust protector under Article 12, or as any other fiduciary.

SOURCES: Laws, 2014, ch. 421, § 96, eff from and after July 1, 2014.

Cross References — Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

§ 91-8-1109. Protection of special needs trusts and other similar trusts for disabled persons.

Notwithstanding the provisions of this chapter that may otherwise be applicable to a trust, no provision thereof shall apply to any special needs trust, supplemental needs trust, or other similar trust established for a person with a disability as a beneficiary, including, without limitation, any trust established pursuant to the provisions of 42 USC Section 1396(p)(d)(4)A or C, as amended from time to time, or other similar federal or state statute, to the extent that the provision would disqualify the trust beneficiary at any time from eligibility for public needs-based assistance benefits for which the beneficiary would otherwise qualify.

SOURCES: Laws, 2014, ch. 421, § 97, eff from and after July 1, 2014.

ARTICLE 12.

TRUST ADVISORS AND TRUST PROTECTORS.

SEC.

- 91-8-1201. Powers of trust advisors and trust protectors.
- 91-8-1202. Trust advisors and trust protectors as fiduciaries.
- 91-8-1203. Trust advisor and trust protector subject to court jurisdiction.
- 91-8-1204. No duty to review actions of trustee, trust advisor, or trust protector.
- 91-8-1205. Fiduciary's liability for action or inaction of trustee, trust advisor, and trust protector.
- 91-8-1206. Limitation of action against trust advisor or trust protector.

§ 91-8-1201. Powers of trust advisors and trust protectors.

(a) A trust protector or trust advisor is any person, and may be a committee of more than one (1) person, other than a trustee, who under the terms of the trust has a power or duty with respect to a trust, including, but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including, but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to terminate all or part of a trust;
(15) The power to veto or direct all or part of any trust distribution;
(16) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(17) The power to make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(18) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(19) The power to select one or more investment advisors, managers or counselors, including, but not limited to, a trustee, and delegate to them any of its powers; and

(20) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of Sections 91-8-410 through 91-8-412 and 91-8-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust to the extent provided in the trust instrument.

(e) Notwithstanding anything in this section to the contrary, no modification, amendment, or grant of a power of appointment with respect to a trust, all of whose beneficiaries are charitable organizations, may authorize a trust protector or trust advisor to grant a beneficial interest in the trust to any noncharitable interest or purpose.

SOURCES: Laws, 2014, ch. 421, § 98, eff from and after July 1, 2014.

§ 91-8-1202. Trust advisors and trust protectors as fiduciaries.

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to the trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

SOURCES: Laws, 2014, ch. 421, § 99, eff from and after July 1, 2014.

§ 91-8-1203. Trust advisor and trust protector subject to court jurisdiction.

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

SOURCES: Laws, 2014, ch. 421, § 100, eff from and after July 1, 2014.

§ 91-8-1204. No duty to review actions of trustee, trust advisor, or trust protector.

(a) Whenever, pursuant to the terms of a trust, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the nonexcluded fiduciary, then, except to the extent that the terms of the trust provide otherwise, the excluded fiduciary shall have no duty to:

(1) Review, evaluate, perform investment reviews, suitability reviews, inquiries, or investigations, or in any other way monitor the conduct of the trustee, trust advisor, or trust protector;

(2) Make recommendations or evaluations or in any way provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent provisions in the trust instrument to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority, including, but not limited to, confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to Section 91-8-813, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust; those administrative actions, as well as any communications made by the excluded fiduciary to the trust advisor, trust protector, or any of their agents or persons they have selected to provide services to the trust, shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

SOURCES: Laws, 2014, ch. 421, § 101, eff from and after July 1, 2014.

§ 91-8-1205. Fiduciary's liability for action or inaction of trustee, trust advisor, and trust protector.

An excluded fiduciary is not liable, either individually or as a fiduciary, for:

(1) Any loss resulting from compliance with a direction of a trustee, trust advisor, or trust protector, including, but not limited to, any loss from the trustee, trust advisor, or trust protector breaching fiduciary responsibilities or acting beyond the trustee's, trust advisor's, or trust protector's scope of authority;

(2) Any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(3) Any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where the action requires the authorization of the trustee, trust advisor, or trust protector, if an excluded fiduciary who had a duty to propose the action timely sought but failed to obtain the authorization.

SOURCES: Laws, 2014, ch. 421, § 102, eff from and after July 1, 2014.

§ 91-8-1206. Limitation of action against trust advisor or trust protector.

(a) A beneficiary may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) A trustee may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the trust advisor or trust protector;
- (2) The termination of the beneficiary’s interest in the trust; or
- (3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against another trust advisor or another trust protector for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against another trust advisor or another trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

- (1) The removal, resignation, or death of the other trust advisor or other trust protector;
- (2) The termination of the beneficiary’s interest in the trust; or
- (3) The termination of the trust.

(j) Notwithstanding subsections (d) through (i), no trustee, trust advisor, or trust protector may commence a proceeding against a trust advisor or trust protector or another trust advisor or another trust protector if, under either subsections (a) through (c) or Section 91-8-1005(a) through (c), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust.

SOURCES: Laws, 2014, ch. 421, § 103, eff from and after July 1, 2014.

CHAPTER 9

Trusts and Trustees

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ARTICLE 1.

TRUSTS — GENERAL PROVISIONS.

SEC.

91-9-1 through 91-9-9. Repealed.

§§ 91-9-1 through 91-9-9. Repealed.

Repealed by Laws, 2014, ch. 421, § 105, effective from and after July 1, 2014.

§ 91-9-1. [Codes, 1857, ch. 44, art. 5; 1871, § 2896; 1880, § 1296; 1892, § 4230; 1906, § 4780; Hemingway's 1917, § 3124; 1930, § 3348; 1942, § 269; Laws, 1993, ch. 507, § 2, eff from and after July 1, 1993.]

§ 91-9-2. [Laws, 2002, ch. 393, § 1; Laws, 2003, ch. 442, § 1, eff from and after July 1, 2003.]

§ 91-9-3. [Codes, 1857, ch. 44, art. 6; 1871, § 2897; 1880, § 1297; 1892, § 4231; 1906, § 4781; Hemingway's 1917, § 3125; 1930, § 3349; 1942, § 270; Laws, 1993, ch. 507, § 3, eff from and after July 1, 1993.]

§ 91-9-5. [Codes, 1942, § 1273-10; Laws, 1960, ch. 217, § 10; Laws, 1996, ch. 400, § 44, eff from and after passage (approved March 19, 1996).]

§ 91-9-7. [Laws, 1993, ch. 507, § 1; Laws, 2001, ch. 425, § 1, eff from and after July 1, 2001.]

§ 91-9-9. [Laws, 1994, ch. 589, § 1; reenacted and amended, Laws, 1999, ch. 374, § 3; reenacted and amended, Laws, 2002, ch. 613, § 1; Laws, 2006, ch. 474, § 18; Laws, 2008, ch. 452, § 3, eff from and after passage (approved Apr. 8, 2008).]

Editor's Note — Former § 91-9-1, which was included in former Article 1 of Chapter 9, related to the creation of trusts and confidences.

Former § 91-9-2, which was included in former Article 1 of Chapter 9, authorized trusts to take title to real property.

Former § 91-9-3, which was included in former Article 1 of Chapter 9, required all grants, assignments or transfers of trusts to be in writing.

Former § 91-9-5, which was included in former Article 1 of Chapter 9, related to the filing or producing vouchers by trustees.

Former § 91-9-7, which was included in former Article 1 of Chapter 9, related to the filing of a certificate of trust agreement in lieu of an entire trust agreement.

Former § 91-9-9, which was included in former Article 1 of Chapter 9, provided additional powers, remedies and rights to fiduciaries with respect to compliance with environmental laws. For present similar provisions, see § 91-8-816.

ARTICLE 3.

UNIFORM TRUSTEES' POWERS.

SEC.

91-9-101 through 91-9-119. Repealed

§§ 91-9-101 through 91-9-119. Repealed.

Repealed by Laws, 2014, ch. 421, § 106, effective from and after July 1, 2014.

§ 91-9-101. [Codes, 1942, § 672-130; Laws, 1966, ch. 372, § 10, eff from and after June 30, 1966.]

§ 91-9-103. [Codes, 1942, § 672-121; Laws, 1966, ch. 372, § 1; Laws, 2006, ch. 474, § 19, eff from and after July 1, 2006.]

§ 91-9-105. [Codes, 1942, § 672-122; Laws, 1966, ch. 372, § 2, eff from and after June 30, 1966.]

§ 91-9-107. [Codes, 1942, § 672-123; Laws, 1966, ch. 372, § 3; Laws, 1990, ch. 547, § 1; Laws, 1994, ch. 589, § 2; Laws, 1999, ch. 374, § 4; Laws, 2001, ch. 471, § 1; Laws, 2002, ch. 616, § 1; Laws, 2006, ch. 474, § 20; Laws, 2008, ch. 452, § 4, eff from and after passage (approved Apr. 8, 2008.)]

§ 91-9-109. [Codes, 1942, § 672-124; Laws, 1966, ch. 372, § 4, eff from and after June 30, 1966.]

§ 91-9-111. [Codes, 1942, § 672-125; Laws, 1966, ch. 372, § 5, eff from and after June 30, 1966.]

§ 91-9-113. [Codes, 1942, § 672-126; Laws, 1966, ch. 372, § 6, eff from and after June 30, 1966.]

§ 91-9-115. [Codes, 1942, § 672-127; Laws, 1966, ch. 372, § 7, eff from and after June 30, 1966.]

§ 91-9-117. [Codes, 1942, § 672-128; Laws, 1966, ch. 372, § 8, eff from and after June 30, 1966.]

§ 91-9-119. [Codes, 1942, § 672-129; Laws, 1966, ch. 372, § 9, eff from and after June 30, 1966.]

Editor's Note — Former § 91-9-101, which was included in former Article 3 of Chapter 9, provided the short title for Article 3.

Former § 91-9-103, which was included in former Article 3 of Chapter 9, provided definitions for words used in Article 3. Definitions can now be found in § 91-8-103.

Former § 91-9-105, which was included in former Article 3 of Chapter 9, provided that trustees have all powers conferred by Article 3 unless limited in the trust instrument.

Former § 91-9-107, which was included in former Article 3 of Chapter 9, related to trustee powers conferred by Article 3. For present similar provisions, see § 91-8-816.

Former § 91-9-109, which was included in former Article 3 of Chapter 9, prohibited a trustee from transferring his/her office or delegate the administration of the trust to another.

Former § 91-9-111, which was included in former Article 3 of Chapter 9, related to the power of the court to, under certain circumstances, remove restrictions on trustee's power that would otherwise be placed on the trustee by the trust of former Article 3 of Chapter 9.

Former § 91-9-113, which was included in former Article 3 of Chapter 9, related to powers exercisable by joint trustees. For present similar provisions, see § 91-8-703.

Former § 91-9-115, which was included in former Article 3 of Chapter 9, provided protections for third persons dealing with or assisting a trustee. For present similar provisions, see § 91-8-1012.

Former § 91-9-117, which was included in former Article 3 of Chapter 9, related to the applicability of former Article 3.

Former § 91-9-119, which was included in former Article 3 of Chapter 9, provided for uniformity of interpretation of former Article 3. For similar provisions relating to uniformity of application and construction of Chapter 8, Title 91, see § 91-8-1101.

Cross References — References contained in a will or trust incorporating by reference the powers enumerated in former §§ 91-9-101 through 91-9-119 (former Article 3) incorporate by reference the powers contained in § 91-8-816, see § 91-8-816.

References contained in a will or trust incorporating by reference the powers enumerated in former Article 3 incorporate by reference the powers contained in this former section, see § 91-8-816.

ARTICLE 5.

RESIGNATION AND SUCCESSION OF TRUSTEES.

SEC.

91-9-201 through 91-9-213. Repealed

§§ 91-9-201 through 91-9-213. Repealed.

Repealed by Laws, 2014, ch. 421, § 107, effective from and after July 1, 2014.

§ 91-9-201. [Codes, 1942, § 672-151; Laws, 1966, ch. 373, § 1, eff from and after passage (approved May 6, 1966).]

§ 91-9-203. [Codes, 1942, § 672-152; Laws, 1966, ch. 373, § 2, eff from and after passage (approved May 6, 1966).]

§ 91-9-205. [Codes, 1942, § 672-153; Laws, 1966, ch. 373, § 3, eff from and after passage (approved May 6, 1966).]

§ 91-9-207. [Codes, 1942, § 672-154; Laws, 1966, ch. 373, § 4, eff from and after passage (approved May 6, 1966).]

§ 91-9-209. [Codes, 1942, § 672-155; Laws, 1966, ch. 373, § 5, eff from and after passage (approved May 6, 1966).]

§ 91-9-211. [Codes, 1942, § 672-156; Laws, 1966, ch. 373, § 6, eff from and after passage (approved May 6, 1966).]

§ 91-9-213. [Codes, 1942, § 672-157; Laws, 1966, ch. 373, § 7, eff from and after passage (approved May 6, 1966).]

Editor's Note — Former § 91-9-201, which was included in former Article 5 of Chapter 9, provided for the applicability of Article 5 and defined trustee.

Former § 91-9-203, which was included in former Article 5 of Chapter 9, related to the resignation of a trustee and appointment of a successor. For present similar provisions, see § 91-8-704 (vacancy in trusteeship and appointment of a successor) and § 91-8-705 (resignation of trustee).

Former § 91-9-205, which was included in former Article 5 of Chapter 9, provided for a trustee accounting and discharge of the trustee.

Former § 91-9-207, which was included in former Article 5 of Chapter 9, related to the title, right and powers of a successor trustee.

Former § 91-9-209, which was included in former Article 5 of Chapter 9, related to beneficiary under disability.

Former § 91-9-211, which was included in former Article 5 of Chapter 9, provided for determining jurisdiction as it relates to trusts. For present provisions relating to jurisdiction and judicial proceedings, see §§ 91-8-201 through 91-8-205.

Former § 91-9-213, which was included in former Article 5 of Chapter 9, provided that the general powers of the courts were not affected by the provisions of former Article 5.

ARTICLE 7.

REMOVAL OF TRUSTEES.

SEC.

91-9-301 through 91-9-305. Repealed

§§ 91-9-301 through 91-9-305. Repealed.

Repealed by Laws, 2014, ch. 421, § 108, effective from and after July 1, 2014.

§ 91-9-301. [Codes, 1942, § 1273-01; Laws, 1960, ch. 221, § 1, eff from and after passage (approved March 31, 1960).]

§ 91-9-303. [Codes, 1942, § 1273-02; Laws, 1960, ch. 221, § 2, from and after passage (approved March 31, 1960).]

§ 91-9-305. [Codes, 1942, § 1273-03; Laws, 1960, ch. 221, § 3, eff from and after passage (approved March 31, 1960).]

Editor's Note — Former § 91-9-301, which was included in former Article 7 of Chapter 9, defined certain words and phrases used in the article.

Former § 91-9-303, which was included in former Article 7 of Chapter 9, provided proceedings for the removal of trustees and the appointment of successors. For present similar provisions, see §§ 91-8-704 through 91-8-706.

Former § 91-9-305, which was included in former Article 7 of Chapter 9, related to the powers of the chancery court in removal proceedings. For present provisions relating to judicial proceedings, see §§ 91-8-201 through 91-8-205.

ARTICLE 11.

FAMILY TRUST PRESERVATION ACT OF 1998.

SEC.

91-9-503. Beneficiary's interests not subject to transfer; restrictions on transfers and enforcements of money judgments.

91-9-505. Trust monies designated for education or support of beneficiary; restrictions on transfers and enforcements of money judgments.

91-9-507. Trust monies designated for payments in trustee's discretion; restrictions and liability on payments to transferees or creditors; beneficiary's right to compel payments by trustee.

91-9-509. Repealed.

§ 91-9-503. Beneficiary's interests not subject to transfer; restrictions on transfers and enforcements of money judgments.

If the trust instrument provides that a beneficiary's interest in income or principal or both of a trust is not subject to voluntary or involuntary transfer, the beneficiary's interest in income or principal or both under the trust may not

be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

SOURCES: Laws, 1998, ch. 460, § 2; Laws, 2014, ch. 513, § 13, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted “Except as provided in Section 91-9-509” from the beginning of the sentence.

§ 91-9-505. Trust monies designated for education or support of beneficiary; restrictions on transfers and enforcements of money judgments.

If the trust instrument provides that the trustee shall pay income or principal or both of a trust for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary. This section shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

SOURCES: Laws, 1998, ch. 460, § 3; Laws, 2014, ch. 513, § 14, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted “Except as provided in Section 91-9-509” from the beginning of the first sentence.

§ 91-9-507. Trust monies designated for payments in trustee's discretion; restrictions and liability on payments to transferees or creditors; beneficiary's right to compel payments by trustee.

(1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both of a trust as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount from the trust that may be paid only in the exercise of the trustee's discretion. This subsection shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

(2) If the trustee has knowledge of a transfer of a beneficiary's interest in a trust or has been served with process in a proceeding for garnishment or attachment or the like by a judgment creditor seeking to reach a beneficiary's interest in a trust, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal of the trust that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply

if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 91-9-503.

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal of a trust.

SOURCES: Laws, 1998, ch. 460, § 4; Laws, 2014, ch. 513, § 15, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted "Except as provided in Section 91-9-509" from the beginning of the first sentence in (1).

§ 91-9-509. Repealed.

Repealed by Laws, 2014, ch. 513, § 16, effective from and after July 1, 2014.

§ 91-9-509. [Laws, 1998, ch. 460, § 5, eff from and after passage (approved March 23, 1998).]

Editor's Note — Former § 91-9-509 provided for situations when a settlor is beneficiary of a settlor-created trust.

ARTICLE 15.

MISSISSIPPI QUALIFIED DISPOSITION IN TRUST ACT.

SEC.

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| 91-9-701. | Short title. |
| 91-9-703. | Definitions. |
| 91-9-705. | Qualified affidavit; contents. |
| 91-9-707. | Claims or actions against property subject to qualified disposition; claims or actions against trustees. |
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| 91-9-711. | Avoidance of qualified disposition. |
| 91-9-713. | Spendthrift restriction. |
| 91-9-715. | Qualified trustees; advisors. |
| 91-9-717. | Investment advisors; service. |
| 91-9-719. | Failure to meet requirements; qualified trustees. |
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§ 91-9-701. Short title.

This article shall be known and may be cited as the Mississippi Qualified Disposition in Trust Act.

SOURCES: Laws, 2014, ch. 513, § 1, eff from and after July 1, 2014.

§ 91-9-703. Definitions.

As used in this article, unless the context otherwise requires:

(a) “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(b) “Creditor” means, with respect to a transferor, a person who has a claim.

(c) “Debt” means liability on a claim.

(d) “Disposition” means a transfer, conveyance or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one or more new trustees. “Disposition” also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition.

(e) “Investment advisor” means a person given authority by the terms of a qualified disposition trust to direct, consent to or disapprove a transferor’s actual or proposed investment decisions, distribution decisions or other decisions of the transferor.

(f) “Investment decision” means the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.

(g) “Person” means an individual, a corporation, an organization, or other legal entity.

(h) “Property” includes real property, personal property, and interests in real or personal property.

(i) “Qualified affidavit” means a sworn affidavit signed by the transferor before making a qualified disposition. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of subsections (n)(2) and (3) of this section and shall state facts as of the time of the original disposition.

(j) “Qualified disposition” means a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a qualified disposition trust, after the transferor executes a qualified affidavit.

(k) “Qualified trustee” means a person who:

(1) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Mississippi Department of Banking and Consumer Finance, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or any successor to them;

(2) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records

for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the trust, or otherwise materially participates in the administration of the trust; and

(3) Is not the transferor.

(l) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made.

(m) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(1) As an owner of property;

(2) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(3) As a trustee.

(n) "Qualified disposition trust" means a trust instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

(1) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;

(2) Is irrevocable; and

(3) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the property to the beneficiary.

SOURCES: Laws, 2014, ch. 513, § 2, eff from and after July 1, 2014.

§ 91-9-705. Qualified affidavit; contents.

A qualified affidavit shall state that:

(a) The transferor has full right, title, and authority to transfer the assets to the trust;

(b) The transfer of the assets to the trust will not render the transferor insolvent;

(c) The transferor does not intend to defraud a creditor by transferring the assets to the trust;

(d) The transferor does not have any pending or threatened court actions against the transferor, except for those court actions identified by the transferor on an attachment to the affidavit;

(e) The transferor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;

(f) The transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code;

(g) The assets being transferred to the trust were not derived from unlawful activities; and

(h) The transferor is a named insured of a general liability insurance policy and, if applicable, a professional liability insurance policy, with policy limits of at least One Million Dollars (\$1,000,000.00) for each respective policy.

SOURCES: Laws, 2014, ch. 513, § 3, eff from and after July 1, 2014.

§ 91-9-707. Claims or actions against property subject to qualified disposition; claims or actions against trustees.

(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for the avoidance of a qualified disposition, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, Section 15-3-101 et seq., and in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud the creditor.

(b)(1) Notwithstanding Section 15-3-115, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to a qualified disposition trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to a qualified disposition trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subsection (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to a qualified disposition trust at the time any public record is made of any transfer of property relative to the qualified disposition, including, but not limited to, the conveyance of real property that is recorded in the office of the chancery clerk of the county in which the property is located or the filing of a financing statement under Title 75, Chapter 9, Mississippi Code of 1972, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with the intent to defraud that specific creditor.

(c) For purposes of this article, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on, or after July 1, 2014, the property that is the subject of the qualified disposition was originally trans-

ferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of Section 91-9-703(n)(2) and (3).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition as are provided in this section and Section 91-9-711, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition. For purposes of this section, counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust that is the subject of a qualified disposition.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date the action is brought, an action by a creditor with respect to the qualified disposition would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made by means of the same qualified disposition trust, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this article. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) A trust that is the subject of a qualified disposition shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in Section 91-9-709 or serves as an investment advisor pursuant to Section 91-9-717.

(i)(1) Notwithstanding any provision of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and the creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of one or more of the following:

(A) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of such debt;

(B) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, if the death, personal injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission of either the transferor or by another person for whom the transferor is or was vicariously liable, but only to the extent of the claim against the transferor or other person for whom the transferor is or was vicariously liable;

(C) To the State of Mississippi or any political subdivision thereof, including, but not limited to, court-ordered restitution in a criminal matter; or

(D) To any creditor in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) if the transferor failed to maintain a One Million Dollar (\$1,000,000.00) umbrella policy as required by subsection (l).

(2)(A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final nonappealable determination of a Mississippi court or a fully domesticated, final nonappealable order of a court of another state that the debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that any attempt would be futile.

(B) Nothing in this subsection (i)(2) shall be construed to prohibit the court from making the findings required in subsection (i)(2)(A) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitimate or elective share.

(k) In addition to provisions of subsection (j), to the extent subsection (j) applies to the laws of any foreign country:

(1) Neither a qualified disposition trust nor any disposition made subject to the terms of the qualified disposition trust is subject to the laws of

any foreign country, nor is any such qualified disposition trust or the disposition void, voidable, liable to be set aside, or defective in any manner for any reason including, but not limited to:

(A) The law of any foreign country prohibits or does not recognize the concept of a qualified disposition trust; or

(B) The qualified disposition trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to the right, claim, or interest.

(2) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(A) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(B) No heirship rights described in subsection (k)(2)(A) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate Title 15, Chapter 3, Mississippi Code of 1972; and

(C) Subsection (k)(1) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust;

(3) No judgment or other holding of any judicial body of any foreign country, including, but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including, but not limited to, estoppel, to the extent the judgment or other holding concerns a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust or to the extent the judgment or other holding concerns property held by the qualified disposition trust.

(4) Subsection (a) applies in addition to all other provisions of this article.

(l) The transferor shall obtain a general liability policy and, if applicable, a professional liability policy, and each policy must have a policy limit of at least One Million Dollars (\$1,000,000.00). Policy premiums must be paid by the transferor.

SOURCES: Laws, 2014, ch. 513, § 4, eff from and after July 1, 2014.

§ 91-9-709. Transferor's powers and rights.

A transferor shall have only the powers and rights conferred by the qualified disposition trust. The powers and rights conferred by the qualified disposition trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust. Except as permitted by Sections 91-9-717 and 91-9-721, the transferor shall have no rights or authority with respect to the corpus of the trust or the income from the trust, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

SOURCES: Laws, 2014, ch. 513, § 5, eff from and after July 1, 2014.

§ 91-9-711. Avoidance of qualified disposition.

(a) A qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with costs, including attorneys' fees, that the court may allow.

(b) In the event any qualified disposition shall be avoided as provided in subsection (a), then:

(1) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(A) The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in the defense of the action or proceedings to avoid the qualified disposition;

(B) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and

(C) For purposes of this subsection (b)(1), it shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subsection (b)(2), it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of Section 91-9-703(n)(1).

(d) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.

SOURCES: Laws, 2014, ch. 513, § 6, eff from and after July 1, 2014.

§ 91-9-713. Spendthrift restriction.

A spendthrift provision as described in Section 91-9-703(n)(3) shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code, codified in 11 USCS, Section 541(c)(2), or any successor provision.

SOURCES: Laws, 2014, ch. 513, § 7, eff from and after July 1, 2014.

§ 91-9-715. Qualified trustees; advisors.

(a) For purposes of this article, neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in Section 91-9-703(k)(1) shall be considered a qualified trustee; however, nothing in this article shall preclude a transferor from appointing one (1) or more advisors, including, but not limited to:

- (1) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors;
- (2) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and
- (3) Investment advisors, whether or not the advisors would meet the requirements imposed by Section 91-9-703(k).

(b) For purposes of subsection (a), "advisor" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds one or more trust powers.

SOURCES: Laws, 2014, ch. 513, § 8, eff from and after July 1, 2014.

§ 91-9-717. Investment advisors; service.

A person may serve as an investment advisor notwithstanding that the person is the transferor of the qualified disposition, but the person may not otherwise serve as advisor to a trust that is a qualified disposition trust except with respect to the retention of the veto right permitted by Section 91-9-721(a).

SOURCES: Laws, 2014, ch. 513, § 9, eff from and after July 1, 2014.

§ 91-9-719. Failure to meet requirements; qualified trustees.

If a qualified trustee of a qualified disposition trust ceases to meet the requirements of Section 91-9-703(k)(1), and there remains no trustee that meets the requirements, the qualified trustee shall be deemed to have resigned as of the time of that cessation, and thereupon the successor qualified trustee provided for in the qualified disposition trust shall become a qualified trustee of the qualified disposition trust, or in the absence of any successor qualified trustee provided for in the qualified disposition trust, then a court of this state shall, upon application of any interested party, appoint a successor qualified trustee.

SOURCES: Laws, 2014, ch. 513, § 10, eff from and after July 1, 2014.

§ 91-9-721. Revocation.

A qualified disposition trust shall not be deemed revocable on account of its inclusion of one or more of the following:

- (a) A transferor's power to veto a distribution from the trust;
- (b) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death;
- (c) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;
- (d) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in Section 664 of the Internal Revenue Code of 1986, codified in 26 USCS Section 664, and any successor provision;
- (e) The transferor's receipt each year of an amount specified in the trust instrument, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined, from time to time, pursuant to the trust;
- (f) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:
 - (1) In the qualified trustee's or qualified trustees' discretion. For purposes of this section, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;
 - (2) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986,

codified in 26 USCS Section 2041(b)(1)(A) or 26 USCS Section 2514(c)(1), as in effect on July 1, 2014, or as later amended; or

(3) At the direction of an advisor described in Section 91-9-715 who is acting:

(i) In the advisor's discretion; or

(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986, 26 USCS Section 2041(b)(1)(A) or 26 USCS Section 2514(c)(1), as in effect on July 1, 2010, or as later amended;

(g) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; however, the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of Section 672(c) of the Internal Revenue Code of 1986, 26 USCS Section 672(c), and any successor provision;

(h) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in Section 2702(c) of the Internal Revenue Code of 1986, codified in 26 USCS Section 2702(c), and any successor provision;

(i) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the qualified disposition trust that expressly permits a distribution to the transferor as reimbursement for the taxes and if the distribution would be the result of a qualified trustee's or qualified trustees' acting:

(1) In the qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the qualified disposition trust; or

(2) At the direction of an advisor described in Section 91-9-717, who is acting in the advisor's discretion;

(j) The ability, whether pursuant to direction in the qualified disposition trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(k) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subsection (c), (f), (i), or (j) by direct payment to the taxing authorities.

SOURCES: Laws, 2014, ch. 513, § 11, eff from and after July 1, 2014.

§ 91-9-723. Application of article.

This article shall apply to qualified dispositions and dispositions by transferors who are trustees made on or after July 1, 2014.

SOURCES: Laws, 2014, ch. 513, § 12, eff from and after July 1, 2014.

TITLE 93

DOMESTIC RELATIONS

Chapter 13.	Guardians and Conservators	93-13-1
Chapter 14.	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	93-14-101
Chapter 17.	Adoption, Change of Name, and Legitimation of Children ...	93-17-1
Chapter 21.	Protection from Domestic Abuse	93-21-1

CHAPTER 5

Divorce and Alimony

§ 93-5-1. Causes for divorce.

JUDICIAL DECISIONS

6. Desertion.
10. Cruel and inhuman treatment.
11. —Elements generally.
12. — —Continuousness.
21. Property rights affected.

6. Desertion.

If the desertion occurred, the year period would have ceased a year after the husband left the marital home, and although the wife testified that she asked the husband to resume the marriage, the husband testified otherwise and the chancellor found the husband more credible; substantial evidence supported the chancellor's decision to deny the wife's petition for divorce on the grounds of desertion. *Brown v. Brown*, — So. 3d —, 2013 Miss. App. LEXIS 820 (Miss. Ct. App. Dec. 3, 2013).

Chancellor did not err in granting a wife a divorce on the ground of desertion be-

cause (1) the chancellor determined that the husband offered no testimony to contradict the wife's assertion that the husband left the marital home and failed to return or resume any marital duties; and (2) the husband offered no proof that his failure to return to the home was the wife's fault. *Gardner v. Gardner*, 130 So. 3d 1162 (Miss. Ct. App. 2013).

10. Cruel and inhuman treatment.

11. —Elements generally.

12. — —Continuousness.

Howard v. Howard, 243 Miss. 301, 138 So. 2d 292 (1962).

21. Property rights affected.

Chancellor lacked authority to divide marital assets because the claims for divorce had been denied. *Brown v. Brown*, — So. 3d —, 2013 Miss. App. LEXIS 820 (Miss. Ct. App. Dec. 3, 2013).

§ 93-5-2. Divorce on ground of irreconcilable differences.

JUDICIAL DECISIONS

2. Applicability.
6. Child custody, support.
9. Written consent.
12. Illustrative cases.

2. Applicability.

Chancery court did not err by not equitably dividing a husband's military retire-

ment when granting the parties a divorce based on irreconcilable differences because the wife signed a consent agreement wherein the wife indicated the chancery court only needed to resolve one disputed issue related to whether she had misappropriated \$ 46,000 from the husband. *Gordon v. Gordon*, 126 So. 3d 922 (Miss.

Ct. App. 2013), writ of certiorari denied by 127 So. 3d 1115, 2013 Miss. LEXIS 631 (Miss. 2013).

6. Child custody, support.

Escalation clauses do not have to be tied to all four factors in *Tedford v. Dempsey*, 437 So.2d 410 (Miss. 1983); therefore, in a child support dispute, a child support agreement was enforceable because it was clear and measurable, it adequately and sufficiently provided for the needs of the child, it allotted room for a fluctuation in income, and it set the minimum amount the parties agreed was sufficient to support the child. The clause was tied to the father's earnings, and depending upon his yearly income, it could have been escalating or de-escalating. (overruling *Bruce v. Bruce*, 687 So.2d 1199 (Miss. 1996)). *Short v. Short*, 131 So. 3d 1149 (Miss. 2014).

Father's argument that a chancellor disregarded the statutory guidelines for child support was rejected because the child support was ordered pursuant to an agreement that the father freely entered into; the parties used the broad latitude prescribed to them in formulating an agreement that they presented to the chancellor as sufficient to support their child. Even though the amount of child support was high, the father consented to providing more support than recommended by the guidelines. *Short v. Short*, 131 So. 3d 1149 (Miss. 2014).

Although a chancery court erred in granting the parties a divorce based on irreconcilable differences without addressing custody or support of their seventeen-year-old child, who was residing with his older sister, the error was harmless and the issue was moot because the child was no longer a minor and the parties were no longer obligated to pay child support for him. *Gordon v. Gordon*, 126 So. 3d 922 (Miss. Ct. App. 2013), writ of cer-

tiorari denied by 127 So. 3d 1115, 2013 Miss. LEXIS 631 (Miss. 2013).

9. Written consent.

Although both parties orally consented to a divorce on the ground of irreconcilable differences, because this statute required that consent to a divorce had to be in writing and signed by both parties personally, the chancellor committed manifest error by not getting consent to the divorce in writing and by granting the divorce. *Reno v. Reno*, 119 So. 3d 1154 (Miss. Ct. App. 2013).

12. Illustrative cases.

Where a husband and wife, in attempting to obtain an irreconcilable-differences divorce, never fully complied with either Miss. Code Ann. § 93-5-2(2) or (3), as their signed consent agreement did not set forth any issues for the chancellor to decide, and their purported settlement did not settle all property rights, the chancellor erred in granting a final divorce. *Sanford v. Sanford*, 124 So. 3d 647 (Miss. 2013).

Because the wife acknowledged that she was entering into a binding agreement to divorce the husband pursuant to the terms of the settlement and on the basis of irreconcilable differences, she withdrew her fault-based divorce grounds, and their property-settlement agreement was executed in writing and signed by both parties, she could not later renegotiate the nature or the terms of the divorce. *Keith v. Keith*, 121 So. 3d 967 (Miss. Ct. App. 2013).

Consent agreement was not invalid. Miss. Code Ann. § 93-5-2 did not require it to be notarized or signed by an attorney; furthermore, the husband's attempt to withdraw or expunge the agreement after the divorce decree was entered did not invalidate it. *McNeese v. McNeese*, 119 So. 3d 264 (Miss. 2013).

§ 93-5-7. Conduct of divorce proceedings.

JUDICIAL DECISIONS

2. Other action, proceedings; *res judicata*.

Wife's claims against her husband which she brought in circuit court that were more closely related to the parties' marital relationship and financial affairs had to be decided in chancery court; her claims against him for intentional and negligent infliction of emotional distress, along with her alienation of affection claims against his alleged paramour, were purely legal and were properly before the circuit court. *Germany v. Germany*, 123 So. 3d 423 (Miss. 2013).

As a wife's conversion claim against her husband was really a request for a award of marital assets that ordinarily would be distributed in the divorce action, the circuit court erred in denying the husband's motion to transfer that claim to the parties' divorce action which was pending in

chancery court. *Germany v. Germany*, 123 So. 3d 423 (Miss. 2013).

Circuit court erred in denying a husband's motion to transfer his wife's claim for unjust enrichment to the parties' divorce action which was pending in chancery court, because 1) it was an equitable claim, and 2) to allow her to pursue that claim in circuit court could lead to a double recovery if she was awarded alimony by the chancery court. *Germany v. Germany*, 123 So. 3d 423 (Miss. 2013).

As the substance of a wife's breach-of-contract and fraud claims against her husband was related to divorce and alimony, the circuit court erred in denying the husband's motion to transfer those claims to the parties' divorce action which was pending in chancery court. *Germany v. Germany*, 123 So. 3d 423 (Miss. 2013).

§ 93-5-17. Proceedings to be had in open court.

JUDICIAL DECISIONS

8. Miscellaneous matters.

Chancellor was within the chancellor's discretion when the chancellor found a spouse in contempt for violating a temporary support order because the spouse admitted that the spouse did not pay the credit-card debts, child support, or medical costs not covered by insurance as man-

dated in the temporary support order. Apparently, the chancellor considered the spouse's unemployment as a basis to not hold the spouse in wilful contempt and to permit the arrearage to be paid in monthly installments. *O'Brien v. O'Brien*, — So. 3d —, 2014 Miss. App. LEXIS 69 (Miss. Ct. App. Feb. 11, 2014).

§ 93-5-23. Custody of children; alimony; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

I. ALIMONY.

2. Factors in determining whether alimony should be granted.
6. —Financial considerations.

9. Amount of payments; generally.
11. — Lump sum payments.

II. CUSTODY.

18. Factors in determining award of custody.

III. SUPPORT OF CHILDREN.

23. Amount of support.
27. Termination or nonsupport.

V. MODIFICATION OF DECREE.

36. Custody; generally.
39. —Evidence.
45. Visitation.
50. Retirement, pension.

VII. OTHER MATTERS.

62. Property division.
63. Attorney fees; generally.

I. ALIMONY.

2. Factors in determining whether alimony should be granted.

6. —Financial considerations.

Trial court did not err in awarding a wife \$1,000 per month as permanent alimony because the parties were married 26 years, the majority of marital assets received by the wife consisted of retirement accounts that she could not use for living expenses without incurring substantial tax penalties, the husband earned considerably more income than the wife and had the potential for his income to increase further through promotions, and the husband was primarily at fault for the collapse of the marriage. *Myrick v. Myrick*, 122 So. 3d 93 (Miss. Ct. App. 2013).

9. Amount of payments; generally.

11. — Lump sum payments.

Mississippi chancery court's order requiring a Chapter 7 debtor to pay his ex-wife \$550,000 as "lump-sum alimony" and \$35,110 in attorney's fees created debts that were nondischargeable under former 11 U.S.C.S. § 523; the court's award was intended as support in the nature of alimony so the debtor's ex-wife could retain the standard of living she enjoyed while she was married to the debtor. *Rustin v. Rustin* (In re Rustin), — Bankr. —, 2011 Bankr. LEXIS 5728 (Bankr. S.D. Miss. Nov. 9, 2011).

II. CUSTODY.

18. Factors in determining award of custody.

In a child custody dispute where a guardian ad litem was appointed after a mother raised allegations of child abuse, a chancellor was not required to accept the recommendations of the guardian ad litem that the mother receive primary physical custody of the children; the chancellor stated that he considered the recommendations, but determined that it was in the best interest of the children for the father to receive primary custody after considering the appropriate factors. *Borden v. Borden*, 130 So. 3d 1168 (Miss. Ct. App. 2014).

Chancellor erred by awarding a maternal grandmother custody of a child because the chancellor failed to apply the legal presumption that it was in the child's best interest for her father to have custody; the chancellor treated the particular custody battle as a modification, failing to recognize that the grandmother had no right to custody as against the father. *Wilson v. Davis*, 111 So. 3d 1280 (Miss. Ct. App. 2013).

III. SUPPORT OF CHILDREN.

23. Amount of support.

In calculating child support, the trial court abused its discretion in attributing any future rental income to the husband, as it had awarded the rental property to the wife. *Collins v. Collins*, 112 So. 3d 428 (Miss. 2013).

In calculating child support, the trial court erred in arbitrarily determining a husband's monthly income to exclusion of the undisputed evidence he provided, due to his failure to comply with Miss. Unif. Ch. Ct. R. 8.05, because the remedy for his violation was to hold him in contempt, not to disregard the credible evidence he provided. *Collins v. Collins*, 112 So. 3d 428 (Miss. 2013).

27. Termination or nonsupport.

Because the chancellor found that the children were emancipated, as they were 24 and 22 years old at the time of the 2012 order, the chancellor erred in requiring the father to pay child support, college expenses, and life and health insurance

for the benefit of the children. *Archie v. Archie*, 126 So. 3d 937 (Miss. Ct. App. 2013).

Chancery court did not abuse its discretion by declining to require a parent to provide post-majority financial support for the parent's child because Mississippi law did not vest the court with the authority to mandate that parents financially support their offspring post-majority. The duty imposed for a parent to support its child does not extend beyond the child's minority, which terminates when the child reaches twenty-one years of age. *Hays v. Alexander*, 114 So. 3d 704 (Miss. 2013).

V. MODIFICATION OF DECREE.

36. Custody; generally.

39. —Evidence.

Chancery court properly weighed the Albright factors and modified custody of the parties' children to the mother because the father and the stepmother smoked in the presence of the children, who had allergy problems, and the mother was the primary parent to take the children to the doctor and wand visit their school, while the father only remembered going to the school once; the mother was granted sole legal and physical custody. *Tidmore v. Tidmore*, 114 So. 3d 753 (Miss. Ct. App. 2013).

45. Visitation.

Chancery court did not abuse its discretion in granting visitation to a father because the father was awarded two weekends per month, six weeks in the summer, and holidays every other year, and "liberal visitation," at a minimum, meant two weekends a month and five weeks during the summer. *Tidmore v. Tidmore*, 114 So. 3d 753 (Miss. Ct. App. 2013).

50. Retirement, pension.

Modification and reduction of a payor spouse's monthly alimony obligation was appropriate because the spouse's unanticipated, health-based retirement was an after-arising, material change in circumstances. However, remand was necessary because it was not apparent that the chancellor considered the spouse's ability to pay the decreased award, as the unchallenged figures representing each party's income and expenses showed that the spouse suffered a monthly deficit after paying alimony. *Peterson v. Peterson*, 129 So. 3d 255 (Miss. Ct. App. 2013).

VII. OTHER MATTERS.

62. Property division.

Chancellor acted within her discretion in choosing the date of the divorce, rather than the date of a temporary support order, to mark the point of demarcation between marital and separate property. To the extent that *Pittman v. Pittman*, 791 So. 2d 857 (Miss. Ct. App. 2001), could be read to create a rule that a temporary support order always and necessarily indicated the point of demarcation, the Mississippi Supreme Court overruled it. *Collins v. Collins*, 112 So. 3d 428 (Miss. 2013).

63. Attorney fees; generally.

Although a chancery court properly awarded attorney's fees to a father for defending against the mother's baseless abuse allegations, Miss. Code Ann. § 93-5-23, and for the mother's contemptuous conduct, the court erred in awarding the full amount of the attorney's bill because at least part of the fees awarded were for custody modification proceedings, for which attorney's fees were not normally awarded. *Tidmore v. Tidmore*, 114 So. 3d 753 (Miss. Ct. App. 2013).

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent; restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

JUDICIAL DECISIONS

1. Factors affecting custody — In general.
2. —Abuse of child or parent.
8. —Miscellaneous.
10. Joint custody.
13. Modification proper.

1. Factors affecting custody — In general.

Award of custody to a father was proper because the trial court found that the Albright factors of the age, health, and sex of the child, parenting skills, physical and mental health and age of the parents, moral fitness of the parents, and stability of the home environment and employment favored the father and only the continuity of care factor favored the mother; nothing showed that the trial court was manifestly wrong in applying the Albright factors or in determining the child's best interest. Under Miss. Code Ann. § 93-5-24(7), awarding custody to the mother was no longer presumed to be in the child's best interest. *Crabb v. Bowden*, 110 So. 3d 346 (Miss. Ct. App. 2013).

Order awarding custody to a mother, in a paternity case brought by the father, was proper because the chancellor issued a written opinion containing a discussion of each Albright factor, as well as an overall analysis regarding the child's best interest, and there was no basis to overturn the decision; among other things, there was simply no competent evidence that the child's health would have been better served in the father's custody, even the father acknowledged that the child spent more time with the mother, and both parties demonstrated that they were willing and able to care for the child. Even if the appellate court disagreed with the chancellor on some of the individual fac-

tors, it would not substitute its judgment for his as to the child's best interest, absent a showing of a manifest abuse of discretion, and that burden was nearly insurmountable in close cases. *Solangi v. Croney*, 118 So. 3d 173 (Miss. Ct. App. 2013).

2. —Abuse of child or parent.

Chancellor did not abuse the chancellor's discretion in refusing to apply the statutory presumption regarding domestic violence set forth in Miss. Code Ann. § 93-5-24 against either parent because, while the chancellor may not have found the presumption to have been applicable, the chancellor did make written findings based on the chancellor's consideration of the domestic violence evidence against both of the parents. *Braddy v. Jenkins*, 126 So. 3d 963 (Miss. Ct. App. 2013).

8. —Miscellaneous.

Chancellor erred by awarding a maternal grandmother custody of a child because the chancellor failed to apply the legal presumption that it was in the child's best interest for her father to have custody; the chancellor treated the particular custody battle as a modification, failing to recognize that the grandmother had no right to custody as against the father. *Wilson v. Davis*, 111 So. 3d 1280 (Miss. Ct. App. 2013).

10. Joint custody.

Chancellor did not err by failing to determine if a mother and father could co-operate before awarding joint custody of the parties' children because (1) the parties consented to the chancellor's determination of custody, meeting the "application of both parents" requirement in Miss. Code Ann. § 93-5-24(2) (2013), (2) the

chancellor was in the best position to evaluate the parties' ability to cooperate, and (3) the facts supported the chancellor's decision. *Keyes v. Keyes*, 134 So. 3d 388 (Miss. Ct. App. 2014).

Because a chancery court did not consider the propriety of granting joint physical custody, as the chancery court may have erroneously concluded that it was not authorized under Miss. Code Ann. § 93-5-24 to consider joint physical custody in an irreconcilable-differences divorce, reversal of the chancery court's judgment and remand of the case to the chancery court for it to reconsider its award of custody, including the propriety of awarding joint physical custody, was appropriate. *Clark v. Clark*, 126 So. 3d 122 (Miss. Ct. App. 2013).

13. Modification proper.

Chancellor did not err by modifying a child-custody arrangement because of a material change in circumstances. The chancellor found that the custodial parent was pregnant and in an extramarital relationship with the parent's fiancé, the custodial parent unilaterally reduced and virtually eliminated the non-custodial parent's extended visitation periods and attempted to interfere with the relationship between the non-custodial parent and the child, and the child had been adversely affected by the custodial parent's actions. *Martin v. Stevenson*, — So. 3d —, 2014 Miss. App. LEXIS 62 (Miss. Ct. App. Feb. 11, 2014).

CHAPTER 9

Bastardy

UNIFORM LAW ON PATERNITY

§ 93-9-10. Disestablishment of paternity.

JUDICIAL DECISIONS

3. Disestablishment denied.

In a case in which a father, who had a genetics test that excluded him as the father of a child, appealed a chancery court's denial of his petition to disestablish paternity, because he signed a stipulated agreement of paternity, the factual

scenario addressed by Miss. Code Ann. § 93-9-10(3)(c), that was approved by order of the chancery court, the chancery court properly denied his petition as presented. *Jones v. Mallett*, 125 So. 3d 650 (Miss. 2013).

§ 93-9-45. Costs.

JUDICIAL DECISIONS

1.5. Applicability.

Award of attorney's fees to a mother based on Miss. Code Ann. § 93-9-45 was error, as that statute applied to paternity cases, and the trial from which the award largely derived was for custody rather than paternity, with paternity being admitted by the parties in their initial plead-

ings; additionally, the statute stated that costs and fees were to be assessed against the defendant, and given that the mother was the defendant, § 93-9-45 did not authorize an award of costs and fees against the father. *Solangi v. Croney*, 118 So. 3d 173 (Miss. Ct. App. 2013).

CHAPTER 11

Enforcement of Support of Dependents

IN GENERAL

§ 93-11-65. Custody and support of minor children; additional remedies; determination of emancipation; temporary support awarded pending determination of parentage; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

II. SUPPORT OF CHILDREN.

- 10. Generally.
- 14. Education or medical expenses.
- 21. Emancipation.

II. SUPPORT OF CHILDREN.

10. Generally.

Plaintiff's tort action based on events that occurred when he was 19 years old was timely as it was filed less than three years after his 21st birthday; removal of the disability of minority did not arise automatically upon the occurrence of specified events except for reaching the age of 21, and thus, plaintiff's emancipation did not trigger the automatic removal of disability of minority. *Baker v. RR Brink Locking Sys.*, 721 F.3d 716 (5th Cir. 2013).

14. Education or medical expenses.

Chancellor did not err in finding that a father was no longer required to pay for his son's college expenses because the child would be rendered emancipated, and the son desired not to have any relationship with the father; however, the chancellor erred in requiring the son to maintain a "C" average to continue receiving child support. *Finch v. Finch*, 137 So. 3d 227 (Miss. 2014).

Chancellor abused the chancellor's discretion by requiring a parent to pay a

lump sum toward the purchase of a vehicle for the parent's child as an educational expense to attend college because there was no evidence that the parent was financially able to pay the cost of the vehicle and the costs of the child's other college expenses. *Brooks v. Fields*, 134 So. 3d 786 (Miss. Ct. App. 2013).

Because the chancellor found that the children were emancipated, as they were 24 and 22 years old at the time of the 2012 order, the chancellor erred in requiring the father to pay child support, college expenses, and life and health insurance for the benefit of the children. *Archie v. Archie*, 126 So. 3d 937 (Miss. Ct. App. 2013).

21. Emancipation.

Although a chancery court erred in granting the parties a divorce based on irreconcilable differences without addressing custody or support of their seventeen-year-old child, who was residing with his older sister, the error was harmless and the issue was moot because the child was no longer a minor and the parties were no longer obligated to pay child support for him. *Gordon v. Gordon*, 126 So. 3d 922 (Miss. Ct. App. 2013), writ of certiorari denied by 127 So. 3d 1115, 2013 Miss. LEXIS 631 (Miss. 2013).

ORDERS FOR WITHHOLDING

§ 93-11-103. Entry of order for withholding; content; copies; duration; withholding from lump-sum payment made by employer to employee who owes child support arrearage.

JUDICIAL DECISIONS

1. Withholding order.

Trial court correctly complied with Miss. Code Ann. § 93-11-103 when he entered the order for withholding several days after the order for support was en-

tered. The statute applies to all orders issued or modified, not only to those found to be in arrears. *McNeese v. McNeese*, 119 So. 3d 264 (Miss. 2013).

CHAPTER 13

Guardians and Conservators

Wards, Generally	93-13-1
Persons in Need of Mental Treatment	93-13-111
Conservators	93-13-251

WARDS, GENERALLY

SEC.

93-13-67. Annual accounts; guardian's minimum commission; closure of guardianship file without final accounting under certain circumstances.

§ 93-13-1. Parental guardianship of minor children.

JUDICIAL DECISIONS

1. Custody in general.
2. Rights of father.
4. Custody in third persons.

1. Custody in general.

Divorced parent who had no authority to bind the estate of the parent's teenage child in a settlement could not bind the estate to an attorney's fee contract, particularly when such a contract would have to have been, but was not, approved by the chancery court. *In re Wilhite*, 121 So. 3d 301 (Miss. Ct. App. 2013).

2. Rights of father.

Chancery court did not err in granting custody to the father after finding that he had not deserted his child because there was no legal compelling reason to alter

or abandon the established standards for rebuttal of the natural-parent presumption; requiring the maternal grandmother first to demonstrate that the father had relinquished his right to parent his child was not an undue burden. *Davis v. Vaughn*, 126 So. 3d 33 (Miss. 2013).

4. Custody in third persons.

Law does not allow parental rights to supercede the best interests of the child; parental rights, as is true of other fundamental rights, can be forfeited or taken away, and the law does recognize some means by which third parties can overcome the law's preference of natural parents. *Davis v. Vaughn*, 126 So. 3d 33 (Miss. 2013).

§ 93-13-17. Bond and oath of guardian.

JUDICIAL DECISIONS

1. Furnishing bond in general.

Former wife's claim that a conservatorship was invalid due to the chancery court's failure to require the co-conservators to post a bond was procedurally barred from consideration because the wife failed to raise the issue in the chancery court; assuming that a bond should

have been required, mere irregularities in the appointment or proceedings were immune from collateral attack, and thus, the absence of bond was a curable defect. *Collins v. Pinnacle Trust*, — So. 3d —, 2014 Miss. LEXIS 103 (Miss. Feb. 13, 2014).

§ 93-13-38. General duties and powers of guardians.

JUDICIAL DECISIONS

1. In general.

Savings clause in Miss. Code Ann. § 15-1-59 did not act to toll the statute of limitations regarding a judgment a ward's conservator obtained in divorce action against the ward's former husband. The

right to pursue money owed to the ward was in the conservator not the ward so under Miss. Code Ann. § 15-1-53, the statute of limitations ran against the conservator. *Lewis v. Smith (In re Lewis)*, 110 So. 3d 811 (Miss. Ct. App. 2013).

§ 93-13-67. Annual accounts; guardian's minimum commission; closure of guardianship file without final accounting under certain circumstances.

(1) Except as herein provided, and as provided in Section 93-13-7, or 93-13-37 and 93-13-38, every guardian shall, at least once in each year, and oftener if required, exhibit his account, showing the receipts of money on account of his ward, and showing the annual product of the estate under his management, and the sale or other disposition thereof, and showing also each item of his expenditure in the maintenance and education of his ward and in the preservation and management of his estate, supported by legal vouchers. In the event that the account shall be presented by a bank or trust company which is subject to the supervision of the Mississippi Department of Banking and Consumer Finance of the State of Mississippi or of the comptroller of the currency of the United States and such account, or the petition for the approval of same, shall contain a statement under oath by an officer of said bank or trust company showing that the vouchers covering the disbursements in the account presented are on file with the bank or trust company, the bank or trust company shall not be required to file vouchers. The bank or trust company shall produce the vouchers for inspection of any interested party or his or her attorney at any time during legal banking hours at the office of the bank or trust company; the court on its own motion or on the motion of any interested party may require that the vouchers be produced and inspected at any hearing of any objections to the annual account. The accounts shall be examined, approved, and allowed by the court in the same way that the accounts of

executors and administrators are examined, approved, and allowed. Compliance with the duties required, in this section, of guardian shall be enforced by the same means and in the same manner as is provided in respect to the accounts of executors and administrators.

(a) However, when the funds and personal property of the ward do not exceed the sum or value of Three Thousand Dollars (\$3,000.00) and there is no prospect of further receipt to come into the hands of the guardian other than interest thereon, or in guardianships in which the only funds on hand or to be received by the guardian are funds paid or to be paid by the Department of Human Services for the benefit of the ward, the chancery court or chancellor in vacation, may, for good cause shown, in his discretion and upon being satisfied it is to the best interest and welfare of the ward, authorize the guardian to dispense with further such annual accounts, except such as may be a final account. Furthermore, the chancery court or chancellor in vacation may dispense with annual accounts if the ward's assets consist solely of funds on deposit at any banking corporation, building and loan association or savings and loan association in this state; have been so deposited under order of the court to remain until otherwise ordered; are fully insured; and a certified copy of the order to deposit, properly receipted, furnished the depository. If the court, or chancellor in vacation, authorizes the discontinuance of annual accounts, the guardian may, without further order of the court, from time to time pay the court costs and bond premiums owing by the estate or him as guardian; and, as well, he may likewise pay emergency obligations as he may have been empowered and allowed to do by necessity except for this section; but, he shall not pay from guardianship funds any other sums without further order of such court or chancellor without having first obtained order of the court or chancellor to do so. If emergency expenditure is needed for the immediate and necessary welfare of the ward, it shall at once be reported to the court, or chancellor in vacation, for approval. Furthermore, the court on its own motion or on the motion of any interested party may require the resumption and continuance of annual accounts.

(b) At the time of any annual account, the court, or a judge thereof in vacation, in its discretion, may allow to the guardian a minimum commission of One Hundred Dollars (\$100.00) per annum for its services, anything in the statutes of this state to the contrary notwithstanding.

(2) If the ward was a minor and the guardianship terminates by any means upon the ward obtaining majority, if a final accounting is not made and the ward does not petition the court to compel a final accounting on or before July 1, 2014, or the twenty-second birthday of the ward, whichever comes last, the court may close its file on the guardianship unless it appears to the court that the court should seek accounting on its own motion.

SOURCES: Codes, Hutchinson's 1848, ch. 36, art. 1(128); 1857, ch. 60, art. 147; 1871, §§ 1214, 1215; 1880, § 2103; 1892, § 2222; 1906, § 2441; Hemingway's 1917, § 2002; 1930, § 1889; 1942, § 425; Laws, 1960, ch. 217, § 1; Laws, 1962, ch. 273; Laws, 1966, ch. 320, § 1; Laws, 1972, ch. 408, § 13; Laws, 1974, ch.

365; Laws, 2013, ch. 339, § 4; Laws, 2013, ch. 554, § 2, eff from and after July 2, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the second sentence of (1) by substituting “Mississippi Department of Banking and Consumer Finance” for “Department of Finance and Administration.” The Joint Committee ratified the correction at its July 24, 2014, meeting.

PERSONS IN NEED OF MENTAL TREATMENT

§ 93-13-111. Appointment of guardians of person and estate, or either, for persons in need of mental treatment.

SOURCES: Laws, 1976, ch. 376, § 1; brought forward without change, Laws, 2014, ch. 384, § 2, eff from and after July 1, 2014.

Editor’s Note — This section was brought forward without change by Chapter 384, § 2, Laws of 2014, effective July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 93-13-127. Persons of unsound mind; qualifications and powers of guardians; jurisdiction and powers of court.

SOURCES: Codes, Hemingway’s 1917, § 398; 1930, § 1897; 1942, § 433; Laws, 1914, ch. 159; Laws, 1920, ch. 317; brought forward without change, Laws, 2014, ch. 384, § 3, eff from and after July 1, 2014.

Editor’s Note — This section was brought forward without change by Chapter 384, § 3, Laws of 2014, effective July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

CONSERVATORS

§ 93-13-251. Petition for appointment of conservator; jurisdiction of courts.

SOURCES: Codes, 1942, § 434-01; Laws, 1962, ch. 281, § 1; Laws, 2008, ch. 496, § 1; brought forward without change, Laws, 2014, ch. 384, § 4, eff from and after July 1, 2014.

Editor’s Note — This section was brought forward without change by Chapter 384, § 4, Laws of 2014, effective July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

JUDICIAL DECISIONS

2. Appointment proper.

Former wife's claim that a conservatorship was invalid due to the chancery court's failure to require the co-conservators to post a bond was procedurally barred from consideration because the wife failed to raise the issue in the chancery court; assuming that a bond should have been required, mere irregularities in the appointment or proceedings were immune from collateral attack, and thus, the absence of bond was a curable defect. *Collins v. Pinnacle Trust*, — So. 3d —, 2014 Miss. LEXIS 103 (Miss. Feb. 13, 2014).

Because conservators' position that a former husband was competent to join in the petition to appoint a conservator was not inconsistent with a position taken in

prior litigation, judicial estoppel was not applicable; there was no evidence that the conservators took any position with regard to Stuart's competency in a criminal matter. *Collins v. Pinnacle Trust*, — So. 3d —, 2014 Miss. LEXIS 103 (Miss. Feb. 13, 2014).

Chancery court did not err in denying a former wife's petition to set aside the conservatorship over her former husband because the conservatorship was not invalid due to lack of notice to the wife; the husband was competent to join in the petition to appoint a conservator, and absent a finding that he was not competent to join the petition, the wife was not entitled to notice of the hearing. *Collins v. Pinnacle Trust*, — So. 3d —, 2014 Miss. LEXIS 103 (Miss. Feb. 13, 2014).

§ 93-13-253. Notice of time and place of hearing; persons to whom notice must be given; service.

JUDICIAL DECISIONS

1. Notice.

Chancery court did not err in denying a former wife's petition to set aside the conservatorship over her former husband because the conservatorship was not invalid due to lack of notice to the wife; the husband was competent to join in the

petition to appoint a conservator, and absent a finding that he was not competent to join the petition, the wife was not entitled to notice of the hearing. *Collins v. Pinnacle Trust*, — So. 3d —, 2014 Miss. LEXIS 103 (Miss. Feb. 13, 2014).

§ 93-13-255. Hearing; appointment of guardian ad litem; examination and certificate of physicians.

JUDICIAL DECISIONS

2. Appointment proper.

Conservatorship was not invalid due to the failure to file a certificate of a medical professional with the clerk of court because the affidavits filed with a former

husband's petition satisfied the requirements of the statute. *Collins v. Pinnacle Trust*, — So. 3d —, 2014 Miss. LEXIS 103 (Miss. Feb. 13, 2014).

CHAPTER 14

Uniform Adult Guardianship and Protective Proceedings
Jurisdiction Act

Article 1.	General provisions	93-14-101
Article 2.	Jurisdiction	93-14-201
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Article 4.	Registration and recognition of orders from other states	93-14-401
Article 5.	Miscellaneous Provisions	93-14-501

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

93-14-101.	Short title.
93-14-102.	Definitions.
93-14-103.	International application of chapter.
93-14-104.	Communication between courts.
93-14-105.	Cooperation between courts.
93-14-106.	Taking testimony in another state.

§ 93-14-101. Short title.

This chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

Editor’s Note — Section 93-14-504 makes this chapter applicable to guardianship and protective proceedings begun on or after July 1, 2014, and this article applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued.

Cross References — This chapter is applicable to guardianship and protective proceedings begun on or after July 1, 2014, see § 93-15-504.

This article is applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued, see § 93-15-504.

Comparable Laws from other States — Alabama: Code of Ala. §§ 26-2B-101 et seq.

Alaska: Alaska Stat. § 13.27.010 et seq.

Arizona: A.R.S. 14-12101 et seq.

Arkansas: A.C.A. § 28-74-101 et seq.

Colorado: C.R.S. 15-14.5-101 et seq.

Delaware: 12 Del. C. § 39A-101 et seq.

District of Columbia: D.C. Code § 21-2401.01 et seq.

Hawaii: HRS § 551G-1 et seq.

Idaho: Idaho Code § 15-13-101 et seq.

Illinois: 755 ILCS 8/101 et seq.

Indiana: Burns Ind. Code Ann. § 29-3.5-1-1 et seq.

Iowa: Iowa Code § 633.700 et seq.

Kansas: KRS § 387.810 et seq.

Maine: 18-A M.R.S. § 5-511 et seq.

Maryland: Md. ESTATES AND TRUSTS Code Ann. § 13.5-101 et seq.
 Minnesota: Minn. Stat. § 524.5-601 et seq.
 Missouri: § 475.501 R.S.Mo. et seq.
 Montana: Mont. Code Anno. § 72-5-601 et seq.
 Nebraska: R.R.S. Neb. § 30-3901 et seq.
 Nevada: Nev. Rev. Stat. Ann. § 159.1991 et seq.
 New Mexico: N.M. Stat. Ann. § 45-5A-101 et seq.
 New York: NY CLS Men Hyg § 83.01 et seq.
 North Dakota: N.D. Cent. Code § 28-35-01 et seq.
 Oklahoma: 30 Okl. St. § 3-301 et seq.
 Oregon: ORS § 125.800 et seq.
 Pennsylvania: 20 Pa.C.S. § 59 et seq.
 South Dakota: S.D. Codified Laws § 29A-5A-101 et seq.
 Tennessee: Tenn. Code Ann. § 34-8-101 et seq.
 Utah: Utah Code Ann. § 75-5b-101 et seq.
 Vermont: 14 V.S.A. § 3151 et seq.
 Virginia: Va. Code Ann. § 64.2-2100 et seq.
 Washington: Rev. Code Wash. (ARCW) § 11.90.010 et seq.
 West Virginia: W. Va. Code § 44C-1-1 et seq.
 Wyoming: Wyo. Stat. § 3-8-101 et seq.

§ 93-14-102. Definitions.

In this chapter:

- (1) “Adult” means an individual who has attained eighteen (18) years of age.
- (2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under Section 93-13-251 et seq.
- (3) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Section 93-13-111 and Sections 93-13-121 through 93-13-135.
- (4) “Guardianship order” means an order appointing a guardian.
- (5) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.
- (6) “Incapacitated person” means an adult for whom a guardian has been appointed.
- (7) “Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (8) “Person,” except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (9) “Protected person” means an adult for whom a protective order has been issued.
- (10) “Protective order” means an order appointing a conservator or other order related to management of an adult’s property.

(11) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

(14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-103. International application of chapter.

A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and Articles 2, 3, and 5.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-104. Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-105. Cooperation between courts.

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing;

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR Section 164.504.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-106. Taking testimony in another state.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

ARTICLE 2.

JURISDICTION.

SEC.

93-14-201.	Definitions; significant connection factors.
93-14-202.	Exclusive basis.
93-14-203.	Jurisdiction.
93-14-204.	Special jurisdiction.
93-14-205.	Exclusive and continuing jurisdiction.
93-14-206.	Appropriate forum.
93-14-207.	Jurisdiction declined by reason of conduct.
93-14-208.	Notice of proceeding.
93-14-209.	Proceedings in more than one state.

§ 93-14-201. Definitions; significant connection factors.

(a) In this article:

(1) “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

(2) “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition.

(3) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under Section 93-14-203 and Section 93-14-301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) The location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;

(2) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) The location of the respondent’s property; and

(4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-202. Exclusive basis.

This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-203. Jurisdiction.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent’s home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in Section 93-14-206;

(3) This state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the Constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under Section 93-14-204 are met.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-204. Special jurisdiction.

(a) A court of this state lacking jurisdiction under Section 93-14-203(1) through (3) has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a respondent who is physically present in this state;

(2) Issue a protective order with respect to real or tangible personal property located in this state;

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 93-14-301.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-205. Exclusive and continuing jurisdiction.

Except as otherwise provided in Section 93-14-204, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-206. Appropriate forum.

(a) A court of this state having jurisdiction under Section 93-14-203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) Any expressed preference of the respondent;
- (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) The length of time the respondent was physically present in or was a legal resident of this or another state;
- (4) The distance of the respondent from the court in each state;
- (5) The financial circumstances of the respondent's estate;
- (6) The nature and location of the evidence;
- (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-207. Jurisdiction declined by reason of conduct.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1) Decline to exercise jurisdiction;
- (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (3) Continue to exercise jurisdiction after considering:

(A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 93-14-206(c); and

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 93-14-203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-208. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-209. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 93-14-204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 93-14-203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 93-14-203 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under Section 93-14-203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the

court in the other state determines that the court in this state is a more appropriate forum.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

ARTICLE 3.

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP.

SEC.

93-14-301. Transfer of guardianship or conservatorship.

93-14-302. Accepting guardianship or conservatorship transferred from another state.

§ 93-14-301. Transfer of guardianship or conservatorship.

(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 93-14-201(b);

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 93-14-302; and

(2) The documents required to terminate a guardianship or conservatorship in this state.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

Editor's Note — Section 93-14-504 makes this article applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued.

Cross References — Article 3 is applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued, see § 93-15-504.

§ 93-14-302. Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 93-14-301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 93-14-301 transferring the proceeding to this state.

(f) Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine

whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Sections 93-13-251 through 93-13-267, Section 93-13-111, Sections 93-13-121 through 93-13-135 and Section 35-5-1 et seq. if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

ARTICLE 4.

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES.

SEC.

- | | |
|------------|--------------------------------------|
| 93-14-401. | Registration of guardianship orders. |
| 93-14-402. | Registration of protective orders. |
| 93-14-403. | Effect of registration. |

§ 93-14-401. Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

Editor's Note — Section 93-14-504 makes this article applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued.

Cross References — Article 4 is applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued, see § 93-15-504.

§ 93-14-402. Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the

protected person is located, certified copies of the order and letters of office and of any bond.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

§ 93-14-403. Effect of registration.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

ARTICLE 5.

MISCELLANEOUS PROVISIONS.

SEC.

- 93-14-501. Uniformity of application and construction.
- 93-14-502. Relation to Electronic Signatures in Global and National Commerce Act.
- 93-14-503. Reserved.
- 93-14-504. Transitional provision.

§ 93-14-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

Editor's Note — Section 93-14-504 makes this section applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued.

Cross References — This section is applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued, see § 93-15-504.

§ 93-14-502. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USCS, Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USCS Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

Editor's Note — Section 93-14-504 makes this section applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued.

Cross References — This section is applicable to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued, see § 93-15-504.

§ 93-14-503. [Reserved].

[Reserved for future codification purposes.]

§ 93-14-504. Transitional provision.

(a) This chapter applies to guardianship and protective proceedings begun on or after July 1, 2014.

(b) Articles 1, 3 and 4 and Sections 93-14-501 and 93-14-502 apply to proceedings begun before July 1, 2014, regardless of whether a guardianship or protective order has been issued.

SOURCES: Laws, 2014, ch. 384, § 1, eff from and after July 1, 2014.

CHAPTER 15

Termination of Rights of Unfit Parents

§ 93-15-103. Factors justifying adoption; grounds for termination of parental rights; alternatives.

JUDICIAL DECISIONS

1. Generally.
3. Abandonment or neglect.
4. Erosion of parent/child relationship.

1. Generally.

Decision terminating a father's parental rights was proper, as testimony of the parties and witnesses, as well as a guardian ad litem's report and recommendation, supported a finding that the mother proved at least one of the grounds enumerated in the termination statute by clear and convincing evidence; the father acknowledged that the father had suffered from an alcohol addiction since 2005. *Chism v. Bright*, — So. 3d —, 2013 Miss. App. LEXIS 284 (Miss. Ct. App. May 21, 2013).

3. Abandonment or neglect.

Termination of a parent's parental rights and support obligations to the par-

ent's child was appropriate because the chancellor found by clear and convincing evidence that termination was in the best interest of the child as the parent had not visited or communicated with the child in almost five years and had not financially supported her for more than four years. *Barnes v. McGee*, — So. 3d —, 2013 Miss. App. LEXIS 706 (Miss. Ct. App. Oct. 22, 2013).

Chancery court had the authority to terminate the parental rights of the natural parents, pursuant to Miss. Code Ann. §§ 93-17-7 and 93-15-103, because credible, clear, and convincing evidence supported a finding of a substantial erosion of the parent/child relationship in that the parents had limited contact with their child after leaving the infant child in the care of relatives, who after three years

wished to adopt the child. In re Adoption of H.H.O.W., 109 So. 3d 1102 (Miss. Ct. App. 2013).

4. Erosion of parent/child relationship.

Termination of a parent's parental rights and support obligations to the parent's child was appropriate because the chancellor found by clear and convincing

evidence that termination was in the best interest of the child as there had been a substantial erosion of the relationship between the parent and the child, which was caused at least in part by the parent's serious neglect, prolonged and unreasonable absence, and unreasonable failure to visit or communicate. *Barnes v. McGee*, — So. 3d —, 2013 Miss. App. LEXIS 706 (Miss. Ct. App. Oct. 22, 2013).

§ 93-15-109. Termination of parental rights.

JUDICIAL DECISIONS

2. Clear and convincing proof.

Termination of a parent's parental rights and support obligations to the parent's child was appropriate because the chancellor found by clear and convincing evidence that termination was in the best interest of the child as the parent had not

visited or communicated with the child in almost five years and had not financially supported the child for more than four years. *Barnes v. McGee*, — So. 3d —, 2013 Miss. App. LEXIS 706 (Miss. Ct. App. Oct. 22, 2013).

CHAPTER 16

Grandparents' Visitation Rights

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

JUDICIAL DECISIONS

1. In general.
2. Attorney fees.
3. Visitation proper.

1. In general.

This section does not include the term "great-grandparent." Therefore, two great-grandparents lacked standing and should not have been awarded visitation rights because they were not "grandparents" within the meaning of this section. The appellate court lacked authority to add words or meaning to a statute that was plain on its face. *Lott v. Alexander*, 134 So. 3d 369 (Miss. Ct. App. 2014).

Right to grandparent visitation is properly statutory and may only be considered if the grandparent meets certain statutory criteria, and the criteria in Mississippi's grandparent-visitation statute are important; by placing limitations on who may petition for visitation, the crite-

ria keep a grandparent's statutory right to visitation from impermissibly encroaching on the parents' rights to rear their children as they see fit. *Aydelott v. Quartaro*, 124 So. 3d 97 (Miss. Ct. App. 2013).

Broadening the limiting criterion of a "viable relationship" to grandparents who wish they had a viable relationship would render the grandparent-visitation statute unconstitutional because it would permit any grandparent to petition for visitation and not just those who meet the narrow circumstances under the statute. *Aydelott v. Quartaro*, 124 So. 3d 97 (Miss. Ct. App. 2013).

Because the chancellor did not give the grandparent-visitation statute the necessary narrower reading, his explicit finding of a viable relationship and implicit finding of unreasonable denial of visitation

failed to pass constitutional muster; the chancellor erred in weighing the grandparents' wishes into whether there was a viable relationship and never explicitly found the parents had unreasonably denied the grandparents visitation. *Aydelott v. Quartaro*, 124 So. 3d 97 (Miss. Ct. App. 2013).

Chancellor erred in awarding grandparents visitation because they failed to show they met the criterion of the establishment of a viable relationship with their granddaughters; the chancellor erred in ignoring the grandparents' admissions and permitting contradictory testimony that they had contributed financially and had frequently visited the grandchildren because they never moved for withdrawal or amendment of their admissions. *Aydelott v. Quartaro*, 124 So. 3d 97 (Miss. Ct. App. 2013).

2. Attorney fees.

Chancellor did not abuse his discretion in denying parents' request for attorney's

fees because the chancellor found no financial hardship would result from their having to pay their own attorney's fees based on the parents' combined income and expenses left sufficient disposable income for travel and entertainment and extra vehicles, *Aydelott v. Quartaro*, 124 So. 3d 97 (Miss. Ct. App. 2013).

3. Visitation proper.

It was within a chancellor's discretion to award greater than usual grandparent visitation because the chancellor found that the grandparents had participated extensively in the life of their late son's child from when the child was approximately four and a half months old and the child's mother had a history of substance abuse, had neglected her children, and had surrendered the child, along with her two other illegitimate children, to her mother when she sought treatment for substance abuse. *Arrington v. Thrash*, 122 So. 3d 144 (Miss. Ct. App. 2013).

CHAPTER 17

Adoption, Change of Name, and Legitimation of Children

Article 1.	In General	93-17-1
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ARTICLE 1.

IN GENERAL.

SEC.	
93-17-3.	Jurisdiction for adoption or readoption proceedings; who may be adopted; who may adopt; venue of adoption proceedings; certificate of child's condition; change of name; adoption by couples of same gender prohibited; completion of home study; compliance with Interstate Compact for Placement of Children and Indian Child Welfare Act.
93-17-13.	Final decree and effect thereof; completion of home study before final decree entered.
SEC.	
93-17-301.	Short title.
93-17-303.	Registration of foreign adoptions.
93-17-305.	Procedure for registration of foreign adoption decree; jurisdiction; restrictions; exceptions; forms.
93-17-307.	Forms.

§ 93-17-1. Jurisdiction to alter names and legitimate offspring; legitimation by subsequent marriage.

Editor's Note — Laws of 2014, ch. 385, § 8 provides:

"SECTION 8. It is the intention of the Legislature and the codifier is so directed that Title 93, Chapter 17, be divided into Articles as follows: Article 1 beginning with Section 93-17-1; Article 3 beginning with Section 93-17-51; Article 5 beginning with Section 93-17-101; Article 7 beginning with Section 93-17-201; and Article 9 beginning with Section 93-17-301."

§ 93-17-3. Jurisdiction for adoption or readoption proceedings; who may be adopted; who may adopt; venue of adoption proceedings; certificate of child's condition; change of name; adoption by couples of same gender prohibited; completion of home study; compliance with Interstate Compact for Placement of Children and Indian Child Welfare Act.

(1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

(b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;

(c) The agency that placed the minor for adoption is licensed in this state and it is in the best interest of the minor that a court of this state assume jurisdiction because:

(i) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state; and

(ii) There is available in this state substantial evidence concerning the minor's present or future care;

(d) The minor and the prospective adoptive parent are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected;

(e) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the

minor, and it is in the best interest of the minor that a court of this state assume jurisdiction; or

(f) The child has been adopted in a foreign country, the agency that placed the minor for adoption is licensed in this state, and it is in the best interest of the child to be readopted in a court of this state having jurisdiction.

(2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.

(3) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(a) The court of this state finds that the court of the state which issued the decree or order:

(i) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or has declined to assume jurisdiction to modify the decree or order; or

(ii) Does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (1)(a) through (d) or has declined to assume jurisdiction over a proceeding for adoption; and

(b) The court of this state has jurisdiction over the proceeding.

(4) Any person may be adopted in accordance with the provisions of this chapter in termtime or in vacation by an unmarried adult or by a married person whose spouse joins in the petition. The adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child has been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's or nurse practitioner's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any, owned by the child. In addition, the petition shall be accompanied by affidavits of the petitioner or petitioners stating the amount of the service fees charged by any adoption agencies or adoption facilitators used by the petitioner or petitioners and any other expenses paid by the petitioner or petitioners in the adoption process as of the time of filing the petition. If the doctor's or nurse practitioner's certificate indicates any abnormal mental or physical condition or defect, the condition or defect shall not, in the discretion of the chancellor, bar the adoption of the child if the adopting parent or parents file an affidavit stating full and complete knowledge of the condition or defect and stating a desire to adopt the child, notwithstanding the condition or defect. The court shall have the power to

change the name of the child as a part of the adoption proceedings. The word “child” in this section shall be construed to refer to the person to be adopted, though an adult.

(5) Adoption by couples of the same gender is prohibited.

(6) No person may be placed in the home of or adopted by the prospective adopting parties before a court-ordered or voluntary home study is satisfactorily completed by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11.

(7) No person may be adopted by a person or persons who reside outside the State of Mississippi unless the provisions of the Interstate Compact for Placement of Children (Section 43-18-1 et seq.) have been complied with. In such cases Forms 100A, 100B (if applicable) and evidence of Interstate Compact for Placement of Children approval shall be added to the permanent adoption record file within one (1) month of the placement, and a minimum of two (2) post-placement reports conducted by a licensed child-placing agency shall be provided to the Mississippi Department of Human Services Interstate Compact for Placement of Children office.

(8) No person may be adopted unless the provisions of the Indian Child Welfare Act (ICWA) have been complied with, if applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. If not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

(9) The readoption of a child who has automatically acquired United States citizenship following an adoption in a foreign country and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, CAA, Public Law 106-395, may be given full force and effect in a readoption proceeding conducted by a court of competent jurisdiction in this state by compliance with the Mississippi Registration of Foreign Adoptions Act, Article 9 of this chapter.

SOURCES: Codes, 1942, § 1269-02; Laws, 1955, Ex. ch. 34, § 2; Laws, 1973, ch. 361, § 1; Laws, 1994, ch. 437, § 1; Laws, 2000, ch. 535, § 1; Laws, 2004, ch. 527, § 1; Laws, 2006, ch. 382, § 1; Laws, 2007, ch. 496, § 4; Laws, 2012, ch. 556, § 1; Laws, 2014, ch. 385, § 1, eff from and after July 1, 2014.

Editor’s Note — The Uniform Child Custody Jurisdiction Act, referred to in this section, was repealed by § 39 of Chapter 519, Laws of 2004, effective July 1, 2004. For present similar provisions, see the Uniform Child Custody Jurisdiction and Enforcement Act, §§ 93-27-101 et seq.

Amendment Notes — The 2014 amendment, in (1), substituted “this section” for “subsections (2) and (3)” and inserted “or readoption” following “adoption”; deleted “or” from the end of (1)(d); added “or” to the end of (1)(e); inserted a hyphen in between “court ordered” in (6) and “child placing” in (7); and added (1)(f) and (9).

Cross References — Mississippi Registration of Foreign Adoptions Act, see §§ 93-17-301 et seq.

§ 93-17-5. Parties to adoption proceeding; consent of child; unmarried father's rights.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

4. Consent to adopt.

I. UNDER CURRENT LAW.

4. Consent to adopt.

While it was undisputed that a child's biological father did not receive formal notice of the adoption of his son, this did not void the adoption of the son as, even if the father had received notice, he did not meet the standard of demonstrating a full

commitment to the responsibilities of parenthood under Miss. Code Ann. § 93-17-5(3), which would have allowed him, as an unwed father, to object to the adoption. There was no evidence that the father provided support for the child, that he tried to visit with the child, or that he was now willing and able to assume physical care for the child. In *re Adoption of a Minor Child v. M.J.W.*, 111 So. 3d 1243 (Miss. Ct. App. 2013).

§ 93-17-6. Petition for determination of rights in proposed adoption of natural child; service of process in the adoption of a foreign born child.

JUDICIAL DECISIONS

5. Consent to adopt.

While it was undisputed that a child's biological father did not receive formal notice of the adoption of his son, this did not void the adoption of the son as, even if the father had received notice, he did not meet the standard of demonstrating a full commitment to the responsibilities of parenthood under Miss. Code Ann. § 93-17-

5(3), which would have allowed him, as an unwed father, to object to the adoption. There was no evidence that the father provided support for the child, that he tried to visit with the child, or that he was now willing and able to assume physical care for the child. In *re Adoption of a Minor Child v. M.J.W.*, 111 So. 3d 1243 (Miss. Ct. App. 2013).

§ 93-17-7. Parental objection; causes for termination of unfit parents' rights.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

5. Grounds for termination — Abandonment or desertion.

5.5. Grounds for termination — Substantial erosion of parent and child.

I. UNDER CURRENT LAW.

5. Grounds for termination — Abandonment or desertion.

Court properly terminated a seven-year-old child's parents' parental rights and allowed the child's adoption, as there

was substantial evidence that the parents suffered from chemical dependency, the mother admitted that the mother never bought any food or clothes for the child, and the parents had never provided consistent individual care of the child. *Little v. Norman*, 119 So. 3d 382 (Miss. Ct. App. 2013).

5.5. Grounds for termination — Substantial erosion of parent and child.

Chancery court had the authority to terminate the parental rights of the natu-

ral parents, pursuant to Miss. Code Ann. §§ 93-17-7 and 93-15-103, because credible, clear, and convincing evidence supported a finding of a substantial erosion of the parent/child relationship in that the parents had limited contact with their

child after leaving the infant child in the care of relatives, who after three years wished to adopt the child. In re Adoption of H.H.O.W., 109 So. 3d 1102 (Miss. Ct. App. 2013).

§ 93-17-13. Final decree and effect thereof; completion of home study before final decree entered.

(1) A final decree of adoption shall not be entered before the expiration of six (6) months from the entry of the interlocutory decree except (a) when a child is a stepchild of a petitioner or is related by blood to the petitioner within the third degree according to the rules of the civil law or in any case in which the chancellor in the exercise of his discretion shall determine from all the proceedings and evidence in said cause that the six-month waiting period is not necessary or required for the benefit of the court, the petitioners or the child to be adopted, and shall so adjudicate in the decree entered in said cause, in either of which cases the final decree may be entered immediately without any delay and without an interlocutory decree, (b) when the child has resided in the home of any petitioner prior to the granting of the interlocutory decree, in which case the court may, in its discretion, shorten the waiting period by the length of time the child has thus resided, or (c) when an adoption in a foreign country is registered under Article 9 of this chapter, the Mississippi Registration of Foreign Adoptions Act.

(2) The final decree shall adjudicate, in addition to such other provisions as may be found by the court to be proper for the protection of the interests of the child; and its effect, unless otherwise specifically provided, shall be that (a) the child shall inherit from and through the adopting parents and shall likewise inherit from the other children of the adopting parents to the same extent and under the same conditions as provided for the inheritance between brothers and sisters of the full blood by the laws of descent and distribution of the State of Mississippi, and that the adopting parents and their other children shall inherit from the child, just as if such child had been born to the adopting parents in lawful wedlock; (b) the child and the adopting parents and adoptive kindred are vested with all of the rights, powers, duties and obligations, respectively, as if such child had been born to the adopting parents in lawful wedlock, including all rights existing by virtue of Section 11-7-13, Mississippi Code of 1972; provided, however, that inheritance by or from the adopted child shall be governed by paragraph (a) above; (c) that the name of the child shall be changed if desired; and (d) that the natural parents and natural kindred of the child shall not inherit by or through the child except as to a natural parent who is the spouse of the adopting parent, and all parental rights of the natural parent, or parents, shall be terminated, except as to a natural parent who is the spouse of the adopting parent. Nothing in this chapter shall restrict the right of any person to dispose of property under a last will and testament.

(3) A final decree of adoption shall not be entered until a court-ordered home study is satisfactorily completed, if required in Section 93-17-11.

SOURCES: Codes, 1942, § 1269-06; Laws, 1955, Ex. ch. 34, § 6; Laws, 1958, chs. 267, 285, § 2; Laws, 1971, ch. 399, § 1; Laws, 1998, ch. 516, § 18; Laws, 2007, ch. 496, § 6; Laws, 2014, ch. 385, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added designators (1), (2), and (3) to former undesignated paragraphs; in present (1), clause (a), deleted “or” preceding “without an interlocutory decree”; added “or” to end of clause (b) and added clause (c); and substituted “paragraph” for “subsection” in present (2).

§ 93-17-14. Home study in international adoptions valid for 24 months.

SOURCES: Laws, 2007, ch. 496, § 7; Laws, 2008, ch. 314, § 1; brought forward without change, Laws, 2014, ch. 385, § 3, eff from and after July 1, 2014.

Editor’s Note — This section was brought forward without change by Chapter 384, § 3, Laws of 2014, effective July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

ARTICLE 3.

ADOPTION SUPPLEMENTAL BENEFITS LAW.

§ 93-17-51. Short title.

Editor’s Note — Laws of 2014, ch. 385, § 8 provides:

“SECTION 8. It is the intention of the Legislature and the codifier is so directed that Title 93, Chapter 17, be divided into Articles as follows: Article 1 beginning with Section 93-17-1; Article 3 beginning with Section 93-17-51; Article 5 beginning with Section 93-17-101; Article 7 beginning with Section 93-17-201; and Article 9 beginning with Section 93-17-301.”

ARTICLE 5.

INTERSTATE AGREEMENTS FOR PROTECTION OF CHILDREN BEING PROVIDED ADOPTION ASSISTANCE.

§ 93-17-101. Legislative findings; purpose.

Editor’s Note — Laws of 2014, ch. 385, § 8 provides:

“SECTION 8. It is the intention of the Legislature and the codifier is so directed that Title 93, Chapter 17, be divided into Articles as follows: Article 1 beginning with Section 93-17-1; Article 3 beginning with Section 93-17-51; Article 5 beginning with Section 93-17-101; Article 7 beginning with Section 93-17-201; and Article 9 beginning with Section 93-17-301.”

ARTICLE 7.

MISSISSIPPI ADOPTION CONFIDENTIALITY ACT.

§ 93-17-201. Short title.

Editor's Note — Laws of 2014, ch. 385, § 8 provides:

"SECTION 8. It is the intention of the Legislature and the codifier is so directed that Title 93, Chapter 17, be divided into Articles as follows: Article 1 beginning with Section 93-17-1; Article 3 beginning with Section 93-17-51; Article 5 beginning with Section 93-17-101; Article 7 beginning with Section 93-17-201; and Article 9 beginning with Section 93-17-301."

ARTICLE 9.

MISSISSIPPI REGISTRATION OF FOREIGN ADOPTIONS ACT.

§ 93-17-301. Short title.

This article shall be known and may be cited as the Mississippi Registration of Foreign Adoptions Act.

SOURCES: Laws, 2014, ch. 385, § 4, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 385, § 8 provides:

"SECTION 8. It is the intention of the Legislature and the codifier is so directed that Title 93, Chapter 17, be divided into Articles as follows: Article 1 beginning with Section 93-17-1; Article 3 beginning with Section 93-17-51; Article 5 beginning with Section 93-17-101; Article 7 beginning with Section 93-17-201; and Article 9 beginning with Section 93-17-301."

§ 93-17-303. Registration of foreign adoptions.

A child who has automatically acquired United States citizenship following a foreign adoption and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, Public Law 106-395, may be issued a Mississippi birth certificate upon compliance with this article and the requirements for adoptions under this chapter to the extent not superseded by this article.

(2) A parent shall not proceed under this article if the foreign adoption has been registered or otherwise finalized by a court of this or any other state.

SOURCES: Laws, 2014, ch. 385, § 5, eff from and after July 1, 2014.

§ 93-17-305. Procedure for registration of foreign adoption decree; jurisdiction; restrictions; exceptions; forms.

(1) An adopting parent or parents may petition the chancery court in the county having jurisdiction to register a foreign adoption decree so that it will be given full and final effect in this state. The petition and order shall be in substantially the form set forth in Section 93-17-307 unless the Supreme Court

promulgates by rule a different set of forms, in which case the petition and order shall be in substantially the form set forth by court rule. As part of the Petition to Register a Foreign Adoption, a child's name may be changed from that appearing on the foreign adoption decree if all other requirements of law as to name change are met.

(2) A foreign adoption decree previously registered or otherwise finalized by a court of this or any other state may not be registered subsequently in any court of this state.

(3) If the chancellor, in termtime or vacation, determines that the foreign adoption can be registered, the chancellor shall sign the order and shall direct the chancery clerk to enter the date of the foreign adoption decree and identify the foreign court on the docket. A certified copy of the order, along with a copy of U.S. Government Form N-560, Certificate of Citizenship, or a copy of the child's United States passport, or both, if either or both documents are a part of the court file, shall be provided to the petitioner by the chancery clerk.

(4) If the chancery court determines that the foreign adoption cannot be registered, the petitioner may proceed as applicable under the provisions of this chapter for adoptions generally. Reasons for which a foreign adoption cannot be registered include, without limitation, if the court determines that the foreign adoption is not a full and final adoption because the foreign-born child has been issued an IH-4 or IR-4 visa.

(5) Adopting parent(s) who are eligible to register a foreign adoption under this article may, for any reason, proceed under this chapter as for adoptions generally.

(6) The petition and accompanying documents, including the final decree, are confidential and are subject to rules of confidentiality as otherwise provided in this chapter for adoption records.

SOURCES: Laws, 2014, ch. 385, § 6, eff from and after July 1, 2014.

§ 93-17-307. Forms.

The petition shall be accompanied by the documentation indicated on the forms. The petition and order shall be in substantially the following form unless the Supreme Court adopts a rule setting forth a different form:

(a) Form for petition; verification by parents.

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI
IN RE: FOREIGN ADOPTION OF _____ FILE NO. _____
PETITION TO REGISTER FOREIGN ADOPTION

1. Petitioner(s), the Adopting Parent(s) of the above-named adopted child, is/are _____.
2. Petitioner(s) reside(s) in _____ County, Mississippi, at

(Street Address)

(City, State, Zip)

3. Has any other court in this or any other state reviewed, registered, finalized or otherwise assumed jurisdiction over the foreign adoption decree being registered here:

(circle one)

Yes

No

If yes, please provide the name of the court, the state and county, what was previously presented to the court and the resulting decision from the court: (Attach all court decrees)

4. The full name of the adopted child at birth as listed on the foreign birth certificate, if available, was

5. The full name of the adopted child as written on the foreign adoption decree is

6. The full name of the adopted child as he or she is to be known from this time forward is

7. The date of birth of the adopted child is

8. The date of the foreign adoption decree is

9. The type of United States visa issued to the adopted child is:

(circle one)

IR-2, IR-3, IH-3, IR-4, IH-4

10. The following documents are attached to this Petition:

a. Copy of child's birth certificate or other birth identification issued by country of birth; or if none, an affidavit of parent(s) stating why none is available.

b. The original documents related to the foreign adoption certified by the United States Embassy abroad and English translation certified by the translator to be correct.

c. Copy of adopted child's United States visa.

d. Copy of home study.

e. A copy of U.S. Government Form N-560, Certificate of Citizenship, or a copy of the child's United States passport, or both, if either or both documents are available.

f. A valid government-issued picture identification of parent or parents, such as a passport or driver's license.

g. Proof of residency of the parent or parents in the State of Mississippi.

h. The social security card of the child.

WHEREFORE, Petitioner(s) request(s) that this Court enter its Order authorizing the registration and docketing of the attached Foreign Adoption Decree with the clerk of the court and decreeing

that _____

(Name of child as written on Foreign Adoption Decree)
 shall henceforth be known as _____
 _____ (Child's name from this time forward)
 and shall have all the rights of a child and heir of the Petitioner(s).

 Signature of Adopting Parent [FN1]

 Signature of Adopting Parent

 Daytime telephone no. for Adopting
 Parent(s)

[FN1] When there are two (2) adopting parents, both must sign.

VERIFICATION TO PETITION TO REGISTER FOREIGN ADOPTION

I/We, _____, verify that I/we am/are the Petitioner(s) named in the foregoing Petition, that I/we have read and understand the information set forth in the Instructions to the Petition to Register Foreign Adoption Decree, and that the facts set forth in the foregoing Petition are true and correct to the best of my/our knowledge, information and belief. I/We further verify that all documents attached to this Petition are true and correct copies of the originals. I/We understand that false statements made herein are subject to the penalties for perjury.

Date: _____

 Signature of Adopting Parent

 Signature of Adopting Parent

(b) Form of Order.

(i) Order of adoption.

IN THE CHANCERY COURT OF _____ COUNTY,
 MISSISSIPPI

IN RE: FOREIGN ADOPTION OF _____ ADOPTION NO.

ORDER

It is hereby ORDERED and DECREED that the Petition to Register Foreign Adoption of:

 (Adopting Parent(s))

is GRANTED and that this Court authorizes the registration and docketing of the Foreign Adoption Decree entered on

_____ (Date of Foreign Adoption Decree)

by _____ (Name of Foreign Court)

in _____ (Foreign Country).

It is FURTHER ORDERED and DECREED that the above Foreign Adoption Decree shall be enforceable as if this Court had entered the Decree and that henceforth this child

(Name of child as written on Foreign Adoption Decree)
shall be known as

(Child's name from this time forward)
and shall have all the rights of a child and heir of

(Adopting Parent(s))
Ordered this the _____ day of _____, 20____.

Chancellor

(ii) Order denying adoption.

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

IN RE: FOREIGN ADOPTION OF _____ ADOPTION NO. _____

ORDER

It is hereby ORDERED and DECREED that the Petition of

(Adopting Parent(s))
_____ to Register Foreign Adoption Decree is DENIED but that Petitioners may proceed with an adoption pursuant to Mississippi law without paying any additional filing fee.

Ordered this the _____ day of _____, 20____.

Chancellor

(c) **Instructions.**

INSTRUCTIONS FOR FILING

PETITION TO REGISTER FOREIGN ADOPTION DECREE

When a child is adopted in conformity with the laws of a foreign country, the adopting parent(s) may register the foreign adoption and obtain a Mississippi adoption decree so that a Mississippi birth certificate can be obtained.

Adopting parent(s) seeking to register the foreign adoption must:

1. Complete, sign and date the Petition to Register Foreign Adoption including Verification. If a foreign adoption decree shows that there are two (2) adopting parents, both parents must execute the Petition to Register Foreign Adoption and verification thereof.

2. Attach the following documents to the Petition:

A copy of the Foreign Adoption Decree;

* A copy of the child's foreign birth certificate. If no birth certificate was issued, a copy of any other birth identification issued by the country

of birth should be attached. If no birth certificate or birth identification can be obtained, an Affidavit stating the reason should be submitted;

- * A copy of the child's United States visa;

- * An English translation of all documents not in English, with a verification by the translator that all translations are true and correct;

- * A copy of the home studies.

- * If available, a copy of the child's Certificate of Citizenship (U.S. Government Form N-560) or a copy of the child's U.S. passport, or both.

3. The Petition to Register with the attachments should be filed with the chancery court in the county in which the adopting parent(s) reside(s). A filing fee for the adoption will be charged in accordance with the fee schedule of the chancery court.

After the Petition to Register is filed, it will be submitted to the Court for review. If the Petition to Register and accompanying documents establish that the foreign adoption of the child is full and final, the Court will enter its order

directing the registration of the Foreign Adoption Decree. The chancery clerk will then issue an order of adoption to which will be attached a copy of U.S. Government Form N-560 and/or a copy of the child's United States passport if those items are in the court file for the Petitioner to submit to the Department of Health, Bureau of Vital Records, in order to obtain a birth certificate.

If the Court cannot determine that the foreign adoption is full and final, it will enter its order denying the Petition. In that case, it will be necessary to proceed under Title 93, Chapter 17, applying to adoptions generally without payment of an additional filing fee.

A foreign adoption may not be a full and final adoption eligible for registration if the child has an IH-4 or IR-4 United States visa, in which case it will be necessary to proceed under Mississippi general adoption law because the adoption of the foreign-born child was not finalized in the country of the child's birth.

Only one (1) state court, whether in this or another state, should exercise jurisdiction over the registration of the foreign adoption or the completion of the adoption initiated in the native country of the foreign-born child. Thus, if the adoption has been finalized or the foreign adoption decree has been registered in another state court or in another court within this state, the adopting parent(s) need not and should not proceed under this article. In similar fashion, if the adoption of the foreign-born child has been finalized in this state, and thereafter, another petitioner seeks to adopt this child, the subsequent proceeding will be a standard proceeding under the applicable provisions of this chapter. Such a situation could occur when the child is to be adopted by a stepparent after divorce or death of the original adopting parent(s), or when, after termination of parental rights, the child is to be adopted by different adopting parent(s).

SOURCES: Laws, 2014, ch. 385, § 7, eff from and after July 1, 2014.

CHAPTER 19

Removal of Disability of Minority

§ 93-19-9. Terms of decree.

JUDICIAL DECISIONS

1. In general.

Plaintiff's tort action based on events that occurred when he was 19 years old was timely as it was filed less than three years after his 21st birthday; removal of the disability of minority did not arise automatically upon the occurrence of

specified events except for reaching the age of 21, and thus, plaintiff's emancipation did not trigger the automatic removal of disability of minority. *Baker v. RR Brink Locking Sys.*, 721 F.3d 716 (5th Cir. 2013).

CHAPTER 21

Protection from Domestic Abuse

Article 1.	Protection from Domestic Abuse Law	93-21-1
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ARTICLE 1.

PROTECTION FROM DOMESTIC ABUSE LAW.

SEC.

93-21-15.	Temporary domestic abuse protection orders; relief; duration; final domestic abuse protection order or consent agreements; provisions addressing custody, visitation or support of minor children; order to set forth findings of fact and provide details of acts restrained; order to be entered into Mississippi Protection Order Registry; modification, amendment or dissolution of order.
93-21-33.	Domestic Violence Task Force created; membership, duties and responsibilities.

§ 93-21-15. Temporary domestic abuse protection orders; relief; duration; final domestic abuse protection order or consent agreements; provisions addressing custody, visitation or support of minor children; order to set forth findings of fact and provide details of acts restrained; order to be entered into Mississippi Protection Order Registry; modification, amendment or dissolution of order.

(1)(a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the municipal and justice courts shall be

empowered to grant a temporary domestic abuse protection order to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. The relief the court may provide includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Prohibiting or limiting respondent's physical proximity to the abused or other household members as designated by the court, including residence and place of work;

(iii) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court, whether in person, by telephone or by other electronic communication;

(iv) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both; or

(v) Prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

(b) The duration of any temporary domestic abuse protection order issued by a municipal or justice court shall not exceed thirty (30) days. However, if the party to be protected and the respondent do not have minor children in common, the duration of the temporary domestic abuse protection order may exceed thirty (30) days but shall not exceed one (1) year.

(c) Any person aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order or to deny such an order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing.

(2)(a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. In granting a final domestic abuse protection order, the chancery or county court may provide for relief that includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(ii) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both;

(iii) When the respondent has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the

exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both, or by consent agreement allowing the respondent to provide suitable, alternate housing;

(iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both;

(v) If the respondent is legally obligated to support the petitioner, any minor children, or any person alleged to be incompetent, ordering the respondent to pay temporary support for the petitioner, any minor children, or any person alleged to be incompetent;

(vi) Ordering the respondent to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, or any combination of the above;

(vii) Prohibiting the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(viii) Prohibiting or limiting respondent's physical proximity to the abused or other household members designated by the court, including residence, school and place of work;

(ix) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court whether in person, by telephone or by electronic communication; and

(x) Ordering counseling or professional medical treatment for the respondent, including counseling or treatment designed to bring about the cessation of domestic abuse.

(b) Except as provided below, a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate. The expiration date of the order shall be clearly stated in the order.

(c) Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days. A party seeking relief beyond that period must initiate appropriate proceedings in the chancery court of appropriate jurisdiction. If at the end of the one-hundred-eighty-day period, neither party has initiated such proceedings, the custody, visitation or support of minor children will revert to the chancery court order addressing such terms that was in effect at the time the domestic abuse protection order was granted. The chancery court in which custody, visitation or support proceedings have been initiated may provide for any temporary provisions addressing custody, visitation or support as the court deems appropriate.

(3) Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall

describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by an independent petition by each party requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

(4) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for temporary and final domestic abuse protection orders. The use of standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(5) Upon issuance of any protection order by the court, the order shall be entered in the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy shall be provided to the sheriff's department in the county of the court of issuance.

(6) Upon subsequent petition by either party and following a hearing of which both parties have received notice and an opportunity to be heard, the court may modify, amend, or dissolve a domestic abuse protection order previously issued by that court.

SOURCES: Laws, 1981, ch. 429, § 8; Laws, 2002, ch. 337, § 2; Laws, 2007, ch. 589, § 5; Laws, 2009, ch. 545, § 7; Laws, 2012, ch. 514, § 4; Laws, 2014, ch. 463, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added the second sentence to the end of (1)(b).

§ 93-21-33. Domestic Violence Task Force created; membership, duties and responsibilities.

(1) There is established the Domestic Violence Task Force, which will be made up of not more than twenty-six (26) members as follows:

(a) The Governor shall appoint the following appointees who shall possess a practicing knowledge of domestic violence as follows:

(i) Four (4) executive directors of domestic violence shelters representing the geographical divisions of the Delta, South, Central and North Mississippi;

(ii) Two (2) batterer's intervention program managers;

(b) The Attorney General, or his designee;

(c) The State Auditor, or his designee;

(d) The Executive Director of the Mississippi Association of Police Chiefs, or his designee;

(e) The Executive Director of the Mississippi Prosecutor's Association, or his designee;

(f) The Executive Director of the Mississippi Sheriff's Association, or his designee;

(g) The Executive Director of the Mississippi Judicial College, or his or her designee;

(h) A practicing member of the Mississippi State Medical Association appointed by the Governor;

(i) A seated or retired justice court judge appointed by the Governor;

(j) A seated or retired chancery court judge appointed by the Governor;

(k) A seated or retired municipal court judge appointed by the Governor;

(l) A seated or retired county court judge appointed by the Governor;

(m) One (1) licensed social worker appointed by the Governor;

(n) One (1) attorney with lobbying experience appointed by the Governor;

(o) Two (2) victims of domestic violence appointed by the Governor;

(p) One (1) practicing municipal prosecutor appointed by the Governor;

(q) One (1) member of the faith-based community to be appointed by the Governor;

(r) One (1) statistical expert appointed by the Governor;

(s) One (1) information technology professional appointed by the Governor; and

(t) The Director of the Mississippi Coalition Against Domestic Violence, or her designee.

The members of the task force shall serve at the pleasure of their respective appointing authorities; ten (10) members shall constitute a quorum for the transaction of business. The members shall elect a chairman and committees whose duties shall be established by the task force.

(2) The Chairmen of the House Public Health and Welfare Committee, the House Appropriations Committee, the Senate Public Health and Welfare Committee and the Senate Appropriations Committee, or their designees, two (2) members of the State Senate appointed by the Lieutenant Governor and one (1) member of the House of Representatives appointed by the Speaker of the House, shall serve as ex officio nonvoting members of the task force.

(3) In addition to the committee members required by subsection (2), the task force shall consist of such other members as are necessary to meet the requirements of any federal regulation applicable to the task force.

(4) The chairman of the task force shall be elected by the voting members of the committee annually and shall not serve more than two (2) consecutive years as chairman. The chair shall call the meetings of the task force.

(5) The members of the task force shall serve without compensation.

(6) The task force shall meet not less than quarterly, and task force members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting. The first meeting of the task force shall be called by the Governor within sixty (60) days of March 20, 2013.

(7) The task force shall provide recommendations and advice regarding the following:

(a) Streamlining funding to domestic violence shelters resulting in uniform and objective funding and auditing standards;

(b) Providing recommendations regarding the Victims of Domestic Violence Fund under Section 93-21-117 and its disbursement to shelters;

(c) Considering the impact, definition, funding and certification of batterer intervention programs;

(d) Creating standards for confidentiality of client records;

(e) Updating training requirements for grant monitors, law enforcement and court personnel;

(f) Providing uniform reporting and automation options;

(g) Implementing the formation of a domestic violence commission with the charge of executing recommendations made by this task force;

(h) Recommending whether the administration of federal grant funds, including, but not limited to, the grant funds known as VOCA and VOWA, should be relocated to the Office Against Interpersonal Violence under the umbrella of the Department of Health.

(8) The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) will provide support and recommendations to the task force.

(9)(a) The task force will develop a report with legislative recommendations to the Governor and to the 2014 Regular Session of the Legislature to be submitted no later than October 1, 2013.

(b) The task force will develop an additional report with legislative recommendations to the Governor and to the 2015 Regular Session of the Legislature to be submitted no later than October 15, 2014.

(c) The task force shall stand dissolved on December 31, 2014.

SOURCES: Laws, 2013, ch. 395, § 1; Laws, 2014, ch. 509, § 9, eff from and after passage (approved Apr. 23, 2014.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (7)(h) by substituting “Office Against Interpersonal Violence” for “Office of Interpersonal Violence.” The Joint Committee ratified the correction at its July 24, 2014, meeting.

Amendment Notes — The 2014 amendment inserted “the” following “The Executive Director of” in (1)(d); added (7)(h), (9)(b), and (9)(c); and made minor punctuation changes in (1)(t) and (7)(g).

ARTICLE 3.

DOMESTIC VIOLENCE SHELTERS.

SEC.

- | | |
|------------|--|
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| 93-21-103. | Domestic violence shelters. |
| 93-21-105. | Repealed. |
| 93-21-107. | Eligibility for funds; requirements. |
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- 93-21-119. Office Against Interpersonal Violence (OAIV) established; OAIV Advisory Board; purpose, membership.
- 93-21-121. Office Against Interpersonal Violence powers and duties.
- 93-21-123. Office Against Interpersonal Violence authorized to seek, receive and administer certain grants.

§ 93-21-101. Definitions.

As used in Sections 93-21-101 through 93-21-113, unless the context otherwise requires:

(a) “Domestic violence shelter” means a place established to provide temporary food and shelter, counseling, and related services to victims of domestic violence.

(b) “Interpersonal violence” means any behavior between family members and intimate partners, but also between acquaintances and strangers, that causes physical, psychological, or sexual harm and includes the crimes of domestic violence, stalking, sexual assault, trafficking, child sexual abuse, and related crimes.

(c) “Batterer intervention program” means a program that focuses on behavior modification for perpetrators of domestic violence in an effort to prevent domestic violence from reoccurring. This shall not include programs focusing on anger management or marriage counseling. Any batterer intervention program must document cooperation with a domestic violence shelter program.

(d) “OAIV” means the Office Against Interpersonal Violence established in Section 93-21-119.

SOURCES: Laws, 1983, ch. 502, § 1, eff from the after passage (approved April 12, 1983); Laws, 2014, ch. 509, § 4, eff from and after July 1, 2014.)

Amendment Notes — The 2014 amendment deleted (a) and redesignated former (b) as present (a) and added (b), (c), and (d).

§ 93-21-103. Domestic violence shelters.

There is hereby established a program for victims of domestic violence through domestic violence shelters. The oversight of shelters, and distribution of state funds for the purpose of serving victims of domestic violence, shall be the responsibility of the Office Against Interpersonal Violence created in Sections 93-21-119 through 93-21-123. The Office Against Interpersonal Violence shall have the authority to promulgate the administrative rules that are necessary and proper to further carry out the purposes of this section.

SOURCES: Laws, 1983, ch. 502, § 2; Laws, 2014, ch. 509, § 5, eff from and after July 1, 2014.)

Amendment Notes — The 2014 amendment added the second and third sentences.

§ 93-21-105. Repealed.

Repealed by Laws, 2014, ch. 509, § 10, effective from and after July 1, 2014.

§ 93-21-105. [Laws, 1983, ch. 502, § 3, eff from and after passage (approved April 12, 1983).]

Editor's Note — Former § 93-21-105 provided specific statutory criteria for the allocation of state funds to domestic violence shelters.

§ 93-21-107. Eligibility for funds; requirements.

(1) To qualify for funds under the provisions of Sections 93-21-101 through 93-21-113, a domestic violence shelter shall meet all the following requirements:

(a) Be incorporated in the state or recognized by the Secretary of State as a private or public nonprofit corporation. Such corporation shall have a board of directors and/or an advisory committee who represents the racial, ethnic and social economic diversity of the area to be served, including, if possible, at least one (1) person who is or has been a victim of domestic violence.

(b) Have designed and developed a program to provide the following basic services to victims of domestic violence and their children:

(i) Shelter on a twenty-four (24) hour a day, seven (7) days a week basis.

(ii) A twenty-four (24) hour, seven (7) days a week switchboard for crisis calls.

(iii) Temporary housing and food facilities.

(iv) Group support and peer counseling.

(v) Referrals to existing services in the community and follow-up on the outcome of the referrals.

(vi) A method of referral for medical care, legal assistance and group support and counseling of victims of domestic violence.

(vii) Information regarding reeducation, marriage and family counseling, job counseling, and training programs, housing referrals, and other available social services.

(viii) A referral program of counseling for the victim and the offender.

(2) Domestic violence shelters shall establish procedures for admission of victims of domestic violence who may seek admission to these shelters on a voluntary basis.

(3) A domestic violence shelter shall not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin or ancestry.

(4) Any state-source grant made to a shelter shall be matched with local funds in an amount not less than twenty-five percent (25%) of the state-source grant amount. The local contribution may not include in-kind contributions.

(5) A domestic violence shelter receiving state funding under the provisions of Sections 93-21-101 through 93-21-113 shall not be prohibited from

accepting gifts, trusts, bequests, grants, endowments, federal funds, other special source funds or transfers of property of any kind for the support of that shelter program.

(6) The OAIV shall insure that no grant made with state funds is in an amount that would exceed One Hundred Thousand Dollars (\$100,000.00) inflated by a general CPI inflator to insure that the grant offers shelters the same buying power that a grant of One Hundred Thousand Dollars (\$100,000.00) provided in 1983.

(7) A domestic violence shelter shall require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.

(8) A domestic violence shelter shall provide educational programs relating to battered spouses and domestic violence designed for both the community at large and/or specialized groups such as hospital personnel and law enforcement officials.

(9) No child shall be placed in any domestic violence shelter that receives state funding under these provisions of Sections 93-21-101 through 93-21-113, and no domestic violence shelter that receives state funding under these provisions may admit or accept any child, unless the child is accompanied by his parent or guardian and such parent or guardian will remain with the child in the shelter until the child leaves or is released from the shelter. However, this subsection shall not prevent any rape crisis center from providing care, counseling and related services to any child who is a victim of rape, attempted rape, sexual battery or attempted sexual battery and who is not accompanied by his parent or guardian.

SOURCES: Laws, 1983, ch. 502, § 4; Laws, 1990, ch. 539, § 3; Laws, 2014, ch. 509, § 6, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment rewrote (6), which read: “No domestic violence shelter may receive more than Fifty Thousand Dollars (\$ 50,000.00) annually from state funding under the provisions of Sections 93-21-101 through 93-21-113.”

Cross References — Office Against Interpersonal Violence (OAIV), see §§ 93-21-119 through 93-21-123.

§ 93-21-109. Records withheld from public disclosure.

(1) Records maintained by domestic violence shelters, except the official minutes of the board of directors of the shelter, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be withheld from public disclosure under the provisions of the Mississippi Public Records Act of 1983.

(2) Any employee, contractor, volunteer or agent of a domestic violence shelter, or of any other entity in possession of information which would tend to identify a victim of domestic violence, who discloses any information that is exempt from disclosure under the Mississippi Public Records Act of 1983, or makes any observation or comment about the identity or condition of any person admitted to a shelter or receiving services of a shelter, unless directed

to do so by an order of a court of competent jurisdiction, shall be civilly liable to the person whose personal information was disclosed in the amount of Ten Thousand Dollars (\$10,000.00), plus any compensatory damages that the individual may have suffered as the result of the disclosure.

(3)(a) No employee, contractor, volunteer or agent of a domestic violence shelter shall be compelled to testify in any civil matter, or surrender any documents, files, or other records of the shelter, regarding a victim of domestic violence or sexual assault without the consent of the victim, except as provided herein.

(b) A defendant may request from the court an in camera review of the materials in possession of any shelter employees, contractors, agents or volunteers to determine if there would be a good cause for allowing disclosure of the materials. In deciding on disclosure, the court shall consider the following factors:

- (i) The materiality of the information to the defense; and
- (ii) The effect disclosure may have on the victim and the victim's relationship with the employee, contractor, volunteer, or agent of the shelter.

(4) A resident or staff member of a domestic violence shelter shall not be required to disclose the street address or physical location of that shelter to any public or private agency. In all cases where the provision of a physical address is required, a post office box address for the domestic violence shelter shall be deemed sufficient.

SOURCES: Laws, 1983, ch. 502, § 5; Laws, 2002, ch. 337, § 3; Laws, 2014, ch. 509, § 7, *eff from and after July 1, 2014*.

Amendment Notes — The 2014 amendment added (2) and (3) and redesignated former undesignated paragraphs accordingly.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

§ 93-21-117. Victims of Domestic Violence Fund.

(1) There is hereby created in the State Treasury a special fund to be known as the "Victims of Domestic Violence Fund." The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations to the Victims of Domestic Violence Fund;
- (f) Assessments collected pursuant to Section 83-39-31; and
- (g) Monies received from such other sources as may be provided by law.

(2) The circuit clerks of the state shall deposit in the fund on a monthly basis the additional fee charged and collected for marriage licenses under the provisions of Section 25-7-13, Mississippi Code of 1972.

(3) All other monies received by the state from every source for the support of the program for victims of domestic violence, established by Sections

93-21-101 through 93-21-113, shall be deposited in the “Victims of Domestic Violence Fund.” The monies in the fund shall be used by the State Department of Health solely for funding and administering domestic violence shelters under the provisions of Sections 93-21-101 through 93-21-113, in such amounts as the Legislature may appropriate to the department for the program for victims of domestic violence established by Sections 93-21-101 through 93-21-113. Not more than ten percent (10%) of the monies in the “Victims of Domestic Violence Fund” shall be appropriated to the State Department of Health for the administration of domestic violence shelters.

(4) From and after July 1, 2014, the Office Against Interpersonal Violence is granted all powers and duties with respect to the management of funds in the Victims of Domestic Violence Fund. Any reference to the Department of Health in this article pertaining to the management of the Victims of Domestic Violence Fund means the Office Against Interpersonal Violence within the Department of Health. In addition to the ten percent (10%) set aside in subsection (3), from and after July 1, 2014, the OAIV is authorized to utilize no more than an additional five percent (5%) of the monies in the Victims of Domestic Violence Fund at its discretion for transition expenses and expense related to statewide projects of the OAIV.

(5) Nothing in this chapter shall be construed to limit the ability of a domestic violence shelter or other domestic violence program to solicit private donations or community support. Any funds raised by a shelter or program from private donations or community support are not subject to the provisions of this chapter.

SOURCES: Laws, 1985, ch. 461, § 1; Laws, 2005, ch. 413, § 4; Laws, 2009, ch. 463, § 2; Laws, 2014, ch. 509, § 8, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (4) and (5).

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

§ 93-21-119. Office Against Interpersonal Violence (OAIV) established; OAIV Advisory Board; purpose, membership.

(1) There is established the Office Against Interpersonal Violence (OAIV) within the Mississippi Department of Health under the direct supervision of the State Health Officer. The OAIV shall be responsible for administering certain state and federal pass-through victim-services funds and related monies, and for developing, promulgating and implementing certification and reporting standards for domestic violence and related victim service providers, and related activities.

(2)(a) There is established an OAIV Advisory Board. The purpose of the Advisory Board is to make recommendations to the Department of Health and to assist the Department of Health in the development, promulgation and implementation of certification and reporting standards for domestic violence and other victim service providers, and in other related activities to be undertaken by the office. The Advisory Board shall not have independent

authority to take official action on behalf of the office or the Mississippi Department of Health and its actions are purely advisory in nature.

(b) The Advisory Board shall consist of seven (7) members to be appointed by the State Health Officer as follows:

(i) One (1) licensed therapist or social worker, whose initial term shall be for two (2) years;

(ii) One (1) member of the faith community, whose initial term shall be for two (2) years;

(iii) One (1) licensed attorney, whose initial term shall be for three (3) years;

(iv) One (1) certified public accountant with experience in auditing, whose initial term shall be for three (3) years;

(v) One (1) business professional, whose initial term shall be for four (4) years;

(vi) One (1) medical professional with forensic experience who may be either a medical doctor or a registered nurse, whose initial term shall be for five (5) years; and

(vii) One (1) survivor of interpersonal violence whose initial term shall be for six (6) years.

All appointees must have general knowledge or first-hand knowledge, or both, of interpersonal violence, and successfully complete training on interpersonal violence provided by Department of Health staff. The members of the Advisory Board shall be women and men of recognized achievement who are representative of the ethnic, geographic, socioeconomic and cultural diversity of the State of Mississippi. Preference in appointments shall be given to appointees who have been members of the Domestic Violence Task Force established in Section 93-21-33. The initial appointments must be made within twenty (20) days after April 23, 2014. As the initial terms expire, the State Health Officer shall appoint members for terms of six (6) years.

(3) Members of the Advisory Board shall be entitled to travel and per diem expenses as provided in Sections 25-3-41 and 25-3-69.

(4) The Advisory Board shall create a steering committee at its first meeting. The purpose of the steering committee is to provide assistance and recommendations to the Advisory Board in the performance of its statutory duties. The steering committee shall consist of four (4) program directors actively engaged in the management of programs for interpersonal violence victims, the Executive Director of the Mississippi Coalition Against Domestic Violence, the Executive Director of the Mississippi Coalition Against Sexual Assault, a representative of the Mississippi Attorney General's Office Bureau of Victim Assistance, and any other individuals whose experience or expertise are deemed necessary to the process or projects of the commission. The members of the steering committee shall be nominated and approved by the Advisory Board, and members of the steering committee shall serve at the pleasure of the Advisory Board. The Advisory Board may authorize members of the steering committee to receive reimbursement for travel and per diem expenses as provided in Sections 25-3-41 and 25-3-69.

SOURCES: Laws, 2014, ch. 509, § 1, eff from and after passage (approved Apr. 23, 2014.)

§ 93-21-121. Office Against Interpersonal Violence powers and duties.

(1) The Office Against Interpersonal Violence shall have authority to:

(a) Receive funds intended for care of victims of interpersonal violence when those funds are not directed elsewhere;

(b) Administer funds received from any source and establish procedures for the disbursement of funds to certified agencies for the delivery of shelter and other services for victims of interpersonal violence;

(c) Cooperate with the Attorney General's office for the certification of any programs receiving funding;

(d) Study the subject of interpersonal violence and related matters, and regularly report to the Legislature on the need for legislative revisions and initiatives in those areas; and

(e) Develop a strategic plan for the delivery of services for victims of interpersonal violence.

(2) The Mississippi Department of Health shall seek appropriations authority on behalf of the OAIV to expend any funds it receives from any source, and shall comply with all statutes and regulations of the state pertaining to fiscal management of public funds.

(3) The OAIV shall have the authority, with the assistance of the Advisory Board, to develop performance standards, financial audit standards, and other necessary standards to insure that all the grantees are managing their facilities and services consistent with the purposes of the grant. From and after July 1, 2016, only agencies meeting the standards developed by the OAIV shall be eligible to receive funding administered by the OAIV.

SOURCES: Laws, 2014, ch. 509, § 2, eff from and after July 1, 2014.

§ 93-21-123. Office Against Interpersonal Violence authorized to seek, receive and administer certain grants.

(1) From and after July 1, 2016, the Office Against Interpersonal Violence shall be the single state agency for the receipt and administration of and the sole authority and responsibility to seek grants on behalf of the state which will be administered or available after July 1, 2016.

(2) The OAIV shall also be authorized to contract with any agency of the state to receive grants or subgrants for the delivery of services to victims of interpersonal violence.

(3) The OAIV shall have the authority to seek grants from any other source making funds available when the purpose of the grant is to provide services and assistance to victims of interpersonal violence, or offers training to persons who assist such victims.

SOURCES: Laws, 2014, ch. 509, § 3, eff from and after July 1, 2014.

TITLE 95

TORTS

CHAPTER 1

Libel and Slander

§ 95-1-1. Certain words actionable.

JUDICIAL DECISIONS

5. Actionable words, in general.

6. —Words actionable per se.

5. Actionable words, in general.

6. —Words actionable per se.

Veteran's claim of slander per se was properly dismissed by the trial court, as

labeling him as a thief and a dishonest person was an insult that might have lead to a breach of the peace under Miss. Code Ann. § 95-1-1, but it did not relieve the veteran of his obligation to prove special damages. *Cook v. Wallot*, — So. 3d —, 2013 Miss. App. LEXIS 245 (Miss. Ct. App. May 7, 2013).

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